

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

2023:PHHC:059490

208

**TA No.409 of 2022 (O&M)
Date of decision: 13.04.2023**

Madhu Bala

...Petitioner

vs

Itjinder Singh and another

...Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Rahul Verma, Advocate for the petitioner.
Mr. JS Toor, Advocate for respondent No.1.

NIDHI GUPTA, J.(Oral)

Prayer in this petition filed by petitioner-maternal grandmother is for transfer of the petition bearing No.GW/109/2021 filed by respondent No.1-husband of deceased daughter of the petitioner under Section 25 read with Section 10 of Hindu Minority and Guardianship Act, 1956, titled "Itjinder Singh vs. Madhu Bala" pending in the Court of Principal Judge, Family Court, SAS Nagar (Mohali) to a court of competent jurisdiction at Panchkula.

2. Learned counsel for the petitioner, inter alia, submits:

- i) that marriage between daughter of the petitioner and respondent No.1 was solemnized on 11.03.2012.
- ii) that one child was born out of the wedlock on 21.08.2013.
- iii) that the petitioner (old widowed lady) along with minor child is living at Panchkula.
- iv) that daughter of the petitioner/wife of respondent No.1 has expired on 14.06.2015.
- v) that the distance between the place of residence and place of proceedings is 50 kms. (one side).

vi) that a petition under Section 125 Cr.P.C. is also pending at Panchkula.

3. Learned counsel for respondent No.1 is unable to dispute the aforesaid factual and legal position.

4. I have heard learned counsel for the parties.

5. The law in such like cases is very clear. As per Section 9 of the Guardians and Wards Act, 1890, petition seeking custody of a minor child is to be filed where the minor child is ordinarily residing. In the present case, the minor child is residing with the petitioner at Panchkula. Present petition for custody of the minor child has been filed by respondent No.1-husband under Section 25 read with Section 10 of Hindu Minority and Guardianship Act, 1956. As per Section 2 of the Hindu Minority and Guardianship Act, 1956, the said Act is supplemental to the Guardians and Wards Act, 1890.

6. Section 2 of the Hindu Minority and Guardianship Act, 1956, is being reproduced hereunder:-

“The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Guardians and Wards Act, 1890.”

7. Therefore, present custody petition should have been filed where the minor child is ordinarily residing. Accordingly, in view of the facts as noticed above as also keeping in view the fact that great inconvenience and hardship will be caused to the petitioner to travel a distance of 50 km to SAS Nagar (Mohali) with minor child, present petition deserves to be allowed.

8. After hearing the learned counsel for the parties, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

- a) The petition bearing No.GW/109/2021 filed by respondent No.1-husband of deceased daughter of the petitioner under Section 25 read with Section 10 of Hindu Minority and Guardianship Act, 1956, titled “Itjinder Singh vs. Madhu Bala” pending in the Court of Principal Judge, Family Court, SAS Nagar (Mohali) is transferred to a court of competent jurisdiction at Panchkula.
- b) The ld. District Judge, SAS Nagar (Mohali) is directed to transfer complete record pertaining to the aforesaid case to District Judge, Panchkula.
- c) The parties, through their counsel, are directed to appear before the District & Sessions Judge, Panchkula on 17.05.2023.
- d) The District Judge, Panchkula will assign the said petition to the Court of competent jurisdiction.
- e) The concerned Court at Panchkula is directed to decide the matter in a time bound manner, preferably within a period of 6 months from the date of appearance of the parties, as custody petition is of the year 2021.

9. Disposed of.

13.04.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge