

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

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2023:PHHC:066682
TA No.592 of 2023(O&M)
Date of decision: 09.05.2023

Sumer Singh and another
vs

...Petitioners

Dharampal @ Kalu and another

...Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Joginder Siwach, Advocate for the petitioners.

NIDHI GUPTA, J.(Oral)

Prayer in this petition filed by petitioners-paternal grandparents of the minor children, is for transfer of their petition under Section 6 of the Hindu Minority and Guardianship Act, 1956, titled “Sumer Singh and another vs. Dharampal @ Kalu and another” pending in the Court of Addl. Principal Judge, Family Court, Bhiwani to a court of competent jurisdiction at Gurugram or Sirsa.

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

i) that daughter-in-law of the petitioners committed suicide on 29.12.2020 and their son is in judicial custody.

ii) that three children were born out of the wedlock of son of the petitioners and daughter of the respondents and they are admittedly living with the respondents.

iii) that petitioner No.1 is in Haryana Police and is posted at Gurugram.

iv) that as per Section 9 of the Guardians and Wards Act, 1890, petitioners have to file the petition for custody of the minor children where they ordinarily reside.

3. I have heard learned counsel for the petitioners.

4. 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 children are residing with the respondents at Sirsa. Present petition for custody of the minor children has been filed by the petitioners under Section 6 of the 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.

5. 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.”

6. Therefore, present custody petition should have been filed where the minor children are ordinarily residing. Accordingly, in view of the facts as noticed above, present petition deserves to be allowed.

7. After going through the entire paperbook, considering the fact that issuance of notice to the respondents has the consequences of staying further proceedings before the trial Court, otherwise the petitioners will have to bear the litigation expenses and transportation expenses; and in case, notice of motion is issued, even the respondents will have to bear the litigation expenses, and in view of the above facts, this Court deems it appropriate to allow the present petition, subject to the following conditions:-

a) The petition filed by petitioners-paternal grandparents of the minor children, for transfer of their petition under Section 6 of the Hindu Minority and Guardianship Act, 1956, titled “Sumer Singh and another vs. Dharampal @ Kalu and another” pending in the Court of Addl. Principal Judge, Family Court, Bhiwani is transferred to a court of competent jurisdiction at Sirsa.

b) The learned District Judge, Bhiwani is directed to transfer complete record pertaining to the aforesaid case to District Judge, Sirsa.

c) The parties are directed to appear before the District & Sessions Judge, Sirsa on 02.06.2023.

d) The District Judge, Sirsa will assign the said petition to the Court of competent jurisdiction.

8. As already noticed above, since the petition is being disposed of without issuing notice to the respondents, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Sirsa on 02.06.2023, it is directed that a copy of this order be sent to the respondent(s) through registered post, besides sending a copy of this order to the District Judges concerned through e-mail. Petitioners through their counsel, present in the Court, are directed to ensure their appearance accordingly.

Pending applications, if any, stand disposed of.

09.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge