

2023:PHHC:141167

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2944-2023 (O&M)

Date of Decision: November 02, 2023

Rajinder Kaur and others

...Petitioners

Versus

Manpreet Singh Sidhu

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rajesh Bhateja, Advocate
for the petitioners.

Mr.Hitesh Verma, Advocate
for the respondent.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 20.04.2023 passed by learned Principal Judge, Family Court, whereby, an application under Order 7 Rule 11 CPC, filed by the petitioners (who are respondents No.2 and 3 before the Family Court), was dismissed.

During the pendency of the petition under Section 25 of The Guardians and Wards Act, 1890, read with Section 6 of the Hindu Minority and Guardianship Act, 1956, for seeking custody of minor child namely Manraj Singh Sidhu, aged about 5 years 3 months, which was filed before Family Court, Bathinda, an application under Order 7 Rule 11 CPC, for rejection of the petition, for want of jurisdiction was filed at the instance

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of the present petitioners (who are respondents No.2 and 3 before the Family Court). It is averred in the application that as per Section 9 of the Guardians and Wards Act, it is mandatory that petition for custody is to be filed before the Court having jurisdiction, where the ward is residing. Further, it is averred in the application that as per the version of the respondent (who is petitioner before the Family Court), the ward is not residing within the territorial jurisdiction of Family Court, Bathinda, where the petition has been filed. Rather, he is residing at Baghapurana, District Moga and as such, at the most, jurisdiction for filing the petition under the Guardians and Wards Act, if any, is available to the respondent at Family Court, Baghapurana or Moga.

However, the respondent resisted the claim of the applicants-petitioners and filed reply, therein, raising legal objections, disputing the maintainability of the application in the present forum. It is stated that the word '**ordinarily resides**' means a regular, normal, settled home or a regular place of abode, distinguishable from a temporary or a forced stay-if minor child is removed to some other place, then, it cannot be said to be place where the child '**ordinarily resides**'. On facts, though the pendency of the petition under The Guardians and Wards Act, as such, is not disputed, but however, it is denied that in the main petition, it was pleaded that ward is not residing within the territorial jurisdiction of Bathinda. Rather, it is submitted that the minor child was ordinarily residing with the respondent (petitioner before Family Court) and he is residing at village Bajjoana, District Bathinda, now Gali No.15, Bhai Mati Dass Nagar, Bathinda. So,

the Family Court, Bathinda, has jurisdiction to entertain and decide the main petition under The Guardians and Wards Act.

After hearing learned counsel for the parties, vide impugned order dated 20.04.2023, the application under Order 7 Rule 11 CPC was dismissed.

Feeling aggrieved by the impugned order, present petition has been filed by the petitioners, who were respondents No.2 and 3 before the Family Court.

Learned counsel for the parties heard.

As culled from the paperbook, it is essential to be noticed that marriage between Rajinder Kaur-petitioner No.1 and Manpreet Singh Sidhu-respondent had taken place on 15.04.2016 at Baghapurana, District Moga, by way of Sikh rites and ceremonies. From the said wedlock, one son namely Manraj Singh Sidhu, was born, who was aged about 5 years 3 months at the time of filing of the petition under The Guardians and Wards Act. However, after some time, the parties fell apart and started residing separate. In the main petition, copy whereof is Annexure P-1, it has been specifically stated by the respondent-Manpreet Singh Sidhu (petitioner therein) that he had filed the petition under Section 9 of the Hindu Marriage Act on 19.07.2021 and thereafter, he had gone to Canada on 16.11.2021. That during his stay at Canada, Amarjit Kaur-petitioner No.1 came to his house at Bathinda for condolence, due to death of his maternal grandmother and handover the passport of Manraj Singh to the mother of the respondent and she had given assurance that if they allow minor child to

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meet his mother Rajinder Kaur-petitioner No.1, then, both, mother and son, shall come back at home of the respondent. It is pleaded that the minor son, who was residing with the parents of the respondent, was taken by the present petitioners, in their illegal custody with cleverness. Furthermore, it has also been asserted that Rajinder Kaur, with the connivance of her parents, uncle and aunt, had now gone to Canada with some other person. After getting Visa, she had changed her mind and left the society of the respondent, without any sufficient cause. Petitioner No.1-Rajinder Kaur, at present, is residing abroad.

Thus, it is evident that apart from raising various allegations with regard to the conduct of Rajinder Kaur-his wife, the respondent had also categorically stated that Amarjit Kaur-petitioner No.3, who is mother of Rajinder Kaur-petitioner No.1 had gone to the house of Manpreet Singh Sidhu-respondent at Bathinda for condolence and taken away the minor child in her custody with cleverness, on the pretext of meeting the child.

The provisions contained in Section 9 of The Guardians and Wards Act, 1890, regulate the jurisdiction of the District Court to entertain an application for appointment of guardian of the person and property of the minor. The aforesaid provision is to the following effect:

"9. Court having Jurisdiction to entertain application.--

(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the district court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the district court having jurisdiction in the place where the minor ordinarily

resides or to a district court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a district court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other district court having jurisdiction."

The provision contained in Section 9(1) of the Act, mandate that if the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place, where the minor ordinarily resides.

The expression "ordinarily resides" as used in aforesaid Section, signifies dwelling in a place for some continuous time. "**Ordinarily resides**" therefore, has to be some thing more than a temporary residence. Even though, the period of such temporary residence may be considerable, the place where the minor generally resides and would be expected to reside but for special circumstances, may be taken to be the place, denoting a place where the minor ordinarily resides.

The question of residence is largely a question of intention. But however, in cases of the minor, no question of intention can arise. Anyway, the Court will have to take into consideration, all the relevant facts, as brought on record, to determine the actual place of residence looking to the attendant circumstances. The past abode, for however a long period it may be, can cease to be a place, where the minor can be said to be ordinarily residing, depending upon the facts and circumstances of each case and the nature and duration of the residence. The mere fact that a minor is found

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actually residing, at a place, at the time of the application, is made by itself, is not sufficient to determine the jurisdiction.

The expression '**ordinarily resides**' and residing at the time of the application are not synonymous and stipulate different situations, which are not inter-changeable. The place where the minor ordinarily resides indicates a place where the minor is expected to reside but for the special circumstances. It excludes places, to which the minor may be removed at or about the time of the filing of the application, for the enforcement of the guardianship and custody of the minor. The place has to be determined by finding out, as to whether the minor was ordinarily residing and where such residence would have continued but for the recent removal of the minor to different place.

Thus, for seeking custody under The Guardians and Wards Act, the place, where the minor is residing presently, would not be a determining factor, in deciding the jurisdiction. But, it is the constructive custody, prior to arising of the cause of action for claiming such custody, which could decide the jurisdiction of the Court and that any change of ordinary residence, which might be temporary or under compelling circumstances or by stealth or cleverness, cannot be the ordinary residence of the minor for determining jurisdiction to apply for custody of the minor from the custody of the other.

In the case in hand, father of the minor child has filed the petition for grant of custody. The copy of the petition is Annexure P-1. In paragraph 9 of the said petition, it has been specifically stated about the

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respondent to have filed petition under Section 9 of the Hindu Marriage Act and thereafter, he had gone to Canada on 16.11.2021 and during his stay at Canada, Amarjit Kaur-petitioner No.1 of the case in hand (who is respondent No.3 before Family Court) had gone to the house of the present respondent at Bathinda, for condolence and hand over the passport of Manraj Singh Sidhu to the mother of the respondent and had given assurance that if they allow the minor child to meet petitioner No.1-Rajinder Kaur i.e. the mother, then, they (mother and son) shall come back at the home of the respondent. The minor son, who was residing with the parents of the respondent, was taken away by the petitioners, in their illegal custody with cleverness, on the pretext to meet the minor child.

Further, it is categorically stated that on return to India, the respondent had then gone to meet his son and to give evidence at Family Court, Bathinda. Many a times, he tried to meet his child but the petitioners did not allow him to meet the minor child and the respondent, after leading his evidence, had again gone to Canada. Again, when he had returned back, he came to know about petitioner No.1-Rajinder Kaur having taken ex-parte divorce on 03.11.2022, on the basis of wrong address of the respondent and on the basis of false allegations, described in the divorce petition under Section 13 of the Hindu Marriage Act. In the said petition, Rajinder Kaur had herself stated about the minor child Manraj Singh Sidhu, to be residing with respondent-Manpreet Singh.

In the copies of Aadhaar Card as well as Passport of minor Manraj Singh Sidhu, he is shown to be resident of village Bajjoana, District

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Bathinda. Further, in the copy of the birth certificate of the minor, there is mention made about the parents, to be resident of village Bajjoana, District Bathinda, at the time of his birth. Not only this, it is categorical claim that even, in the ex-parte divorce decree obtained by Rajinder Kaur against Manpreet Singh Sidhu, there is mention made about Manraj Singh Sidhu to be residing with the respondent i.e. his father. Copy of the judgment is Annexure P-4, wherein, it is so mentioned.

No doubt, as pointed out by learned counsel for the petitioners, there are copies of school certificate, coming on record, wherein, minor Manraj Singh Sidhu is shown to be student at Baghapurana, but they relate to the period from 2022. In fact, it is categorical claim of the respondent about minor child to have been taken away on the wrong assertion with cleverness.

In the light of the aforesaid, shifting of minor Manraj Singh Sidhu and his taking away from his paternal grand-mother to Baghapurana, District Moga, i.e. house of petitioners, on the pretext of extending promise to return back of petitioner No.1-Rajinder Kaur, to the matrimonial house, cannot be said to be ordinarily residence of the minor. This is all the more essential to be noted, as in the petition for seeking divorce, filed in the year 2022, Rajinder Kaur-petitioner No.1 had asserted about Manraj Singh Sidhu to be residing with respondent-Manpreet Singh Sidhu.

In view of the aforesaid observations, learned Family Court had rightly concluded about Manraj Singh Sidhu to be ordinarily residing within territorial jurisdiction at Family Court, Bathinda, where the petition under

Section 25 of The Guardians and Wards Act filed by the respondent and as such, has rightly dismissed the application under Order 7 Rule 11 CPC.

The impugned order, as such, does not call for interference.
Hence, the present petition sans merit and the same is hereby dismissed.

November 02, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No