

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

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TA No.639 of 2023 (O&M)

Date of decision: 16.05.2023

Manjit Kaur**...Petitioner(s)****vs****Joginder Singh****...Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Kanwaljeet Singh Brar, Advocate for the petitioner.

NIDHI GUPTA, J.(Oral)

1. Prayer in this petition filed by petitioner-wife is for transfer of the petition filed by respondent-husband under Section 7 read with Section 25 of the Guardians and Wards Act, 1890, titled “Joginder Singh vs. Manjit Kaur” pending in the Court of Addl. Principal Judge, Family Court, Samana, District Patiala to a court of competent jurisdiction at Fatehgarh Sahib.

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

i) that the parties solemnized marriage in the year 2011.

ii) that one child was born out of the wedlock on 10.06.2012.

iii) that the petitioner along with minor child is living in her parental home at Fatehgarh Sahib.

iv) that as per Section 9 of the Guardians and Wards Act, 1890, respondent has to file the petition for custody of the minor child where he ordinarily resides.

v) that the following cases are also pending between the parties at Fatehgarh Sahib:-

a. Petition under Section 13 of the Hindu Marriage Act, 1955.

b. Petition under the Protection of Women from Domestic Violence Act, 2005.

3. I have heard learned counsel for the petitioner.

4. The legal position in such like cases as the present one, is well established. As per Section 9 of the Guardians and Wards Act, 1890, petition for custody is required to be filed where the minor child ordinarily resides. In the present case, minor child is admittedly residing with petitioner at Fatehgarh Sahib.

5. After going through the entire paperbook, considering the fact that issuance of notice to the respondent has the consequences of staying further proceedings before the trial Court, otherwise the petitioner-wife will have to bear the litigation expenses and transportation expenses and in case, notice of motion is issued, even the respondent-husband has 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 respondent-husband under Section 7 read with Section 25 of the Guardians and Wards Act, 1890, titled “Joginder Singh vs. Manjit Kaur” pending in the Court of Addl. Principal Judge, Family Court, Samana, District Patiala is transferred to a court of competent jurisdiction at Fatehgarh Sahib.

b) The Id. District Judge, Patiala is directed to transfer complete record pertaining to the aforesaid case to District Judge, Fatehgarh Sahib.

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

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

6. As already noticed above, since the petition is being disposed of without issuing notice to the respondent, accordingly, in these peculiar circumstances, in order to ensure appearance of the parties before the District Judge, Fatehgarh Sahib 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. Petitioner through her counsel, present in the Court, is directed to ensure her appearance accordingly.

Disposed of.

16.05.2023

ashok

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No

(Nidhi Gupta)
Judge