

2. The application is allowed in terms of prayer clause (a) and stands disposed off.
3. First Appeal be registered.

INTERIM APPLICATION NO. 17897 OF 2023

1. This application is filed seeking stay to the impugned judgment and order dated 25th August 2022 by which the learned District Judge-1, Ratnagiri in Civil Miscellaneous Application 04 of 2022, has allowed the application under Section 25 of the Guardians and Wards Act, 1890 filed by the present respondent natural guardian of children Sudhan and Sudhanva.

2. The facts in short are that :

- a) The children twins born on 22nd October 2017. Unfortunately their mother died on 28th October 2017. The father i.e. respondent in the interest of children allowed the twins to be taken by his grandmother i.e. mother's mother of the children and the maternal uncle who is residing at Tal-Sirsi, District-Karwar, Karnataka. After the children grown up sufficiently, he filed an application in the year 2018 in the Court of learned District Judge-1, Ratnagiri

seeking custody of minors. Learned District Judge by way of impugned judgment allowed the application and directed to hand over custody to the father.

3. The order is now subject matter of appeal. This Court vide order dated 19th December 2022 had granted ex-parte ad interim relief. Respondent has opposed the application.

4. Learned counsel for the applicant vehemently submits that he has raised a ground of jurisdiction in the First Appeal which goes to the root of the matter as children are presently residing with the applicant in Karnataka and thus it is only the Court in Karnataka that has a jurisdiction to decide the application under Section 25 of the Guardians and Wards Act, 1890. The Court at Ratnagiri had no jurisdiction.

5. He further submits that in the matter of custody of children the paramount consideration is always leads the interest of the children. The children are residing with grandmother since last six years. Now language they speak is Kannada. They do not know Marathi. It is further submitted that children since their childhood are staying with grandmother. They have not even met their biological father. They have already started taking education in the school having

Kannada as medium of instruction and therefore, it is not in the interest of children to hand over their custody to father.

6. Learned counsel for the respondent vehemently argued and submits that in view of the equitable branch of jurisdiction the judgment is challenged. On merits there is no challenge as such. In any case, he submits that Section 9 of the Act gives the jurisdiction to the Court where children are ordinarily residing which is to be taken as a place of their birth. Children are born at Ratnagiri. It is only because of unfortunate happenings immediately after their mother's death they were staying with their grandmother. This clearly shows that since at that time decision is taken in the interest of the children. He further submits that in view of section 6 Hindu Minority and Guardian Act, 1966, the father is the natural guardian. There is no question of appointing other any person as a guardian. In any case, there is already a judgment passed by the Court at Sirsi, Karnataka rejecting the application passed by the District Judge, at Karwar. Though it is testamentary order that the respondent cannot be take care of the children till attaining age of majority and going into positive view although that could not come in the way for deciding as now substantive application filed by father is allowed in the Court at

Ratnagiri.

7. Sofar as welfare of the children is concerned, he submits that in it's order the executing court has clearly observed that now the children are comfortable with the father and step mother. The Executing court has facilitated the children to get properly acquainted with father and step mother and the court has already been recorded that now children are comfortable and their custody can be handed over to father. It is only because of the interim order passed by this Court the custody is not handed over. It is submitted this clearly shows that his father is showing true love and affection towards children and there is no question of the children getting disturbed because of handing over of the custody.

8. It was argued by the learned advocate for the applicant that if custody is abruptly given the children will receive shock and they may get mentally disturbed.

9. This court finds that as the father is the natural guardian there is no question of handing over custody of the children to any other person. Looking at the welfare of the children it is clearly seen that the children are now comfortable with the father and step mother. The age of the children is now six years. They are sufficiently matured.

Sofar as the language is concerned, the child at this age can always adopt and learn new language. There is also a stepmother. It is not a case that mother of the children died because of ill treatment etc. She has unfortunately died because of pregnancy complications. This court finds that no case is made out to stay the impugned order and the application is dismissed and disposed off in view of this order.

10. It is reported that the next date before the Executing Court is of 8th January 2024. This Court expects the Executing Court to disposed off the execution proceedings as early as possible.

11. List the First Appeal on 19th January 2024.

(KISHORE C. SANT, J)