

Ct. 19.12
No. 29 2025
779
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C.O. 3782 of 2024

Tanmoy Banerjee
Vs.
Shirine Banerjee

Mr. Supratik Basu **...For the Petitioner**
Mr. Rajdeep Bhattachar **...For the Opposite Party**

The petitioner has assailed the order no. 15 dated 12.10. 2023 passed in Misc. Case No. 29 of 2022.

It is submitted on behalf of the petitioner that petitioner preferred an application under section 9 of the Guardian and Wards Act, before learned Additional District Judge, Fast Track Court III, Barrackpore, North 24 Parganas.

Opposite party/wife submitted that the opposite party/mother and the ward are resident at present at Bhubenewar and they are residing therein since first weeks of January, 2022 and the ward is presently studying in class VII of St. Xavier's International High School at Patia Bhubeneswar.

Learned court below by the impugned order observed that mere factual residence at a place at the time of proceeding is not sufficient to confer jurisdiction of the expression "ordinarily

resides” appearing in section 9(2). The jurisdiction would be under the District Judge where the minor ordinarily resides. Accordingly, he holds that since he never stayed with her mother at her parental house at Salkia, Howrah and that the child along with his mother is residing for a considerable period of time at Bhubaneswar, Orissa so his ordinary place of residence should be treated as Bhubaneswar and as such invoking his jurisdiction under Order VII Rule 10 of the Code of Civil Procedure, he returned the plaint to the petitioner for presenting it before the appropriate forum.

Being aggrieved by the aforesaid order, learned counsel for the petitioner submits that the child was born at his paternal house at Salkia, within the jurisdiction of District Judge Howrah, and the Aadhar Card of the child as well as her mother is still showing their address within the jurisdiction of Howrah, which is also the matrimonial house of petitioner’s wife.

Therefore, since the permanent address of the mother and the ward is within the jurisdiction of learned District Judge, Howrah, so the court

below was not justified in returning the plaint for presentation before any other forum. In this context, petitioner's counsel relied upon judgments of this High Court passed in the case of **Priyanka Mohata _vs- Ashwin Mohata reported in 2024 CAL 835, Dipika Agarwal Nee Khaitan -vs- Rishi Agarwal reported in AIR Online 2020 CAL 326 and Smt. Soumi Mukherje Vs. Manas Mukherjee reported 2019 AIR CC 2600 (CAL).**

Learned counsel for the opposite party raised objection contending that he has filed affidavit-in-opposition and in such opposition he has annexed the documents about the schooling of the ward at Bhubaneswar and also the tenancy agreement, which clearly states that the ward along with her mother are presently staying at Bhubaneswar for pursuing further studies of the child and as such, it cannot be said ordinary residence of the child is within the jurisdiction of learned District Judge, Howrah.

Learned counsel for the opposite party in support of his contention has relied upon a judgment of the Apex Court in the case of **Ruchi**

Majoo –vs- Sanjeev Majoo reported in (2011) 6 SCC 479.

Having heard learned counsel for the petitioner and the opposite party, it appears that there is no dispute about the fact that the ward at present is residing at Bhubaneswar along with his mother and he is studying there in Class-VII in St. Xavier's International High School, Bhubaneswar.

Therefore, the issue involved in the instant case is that since Section 9(2) of the Gurdian and Wards Act has expressly stated that the place of jurisdiction in such cases would be where the minor ordinarily resides, therefore, the word "ordinarily resides" is to be considered in the present context to come to a conclusion as to whether the court below was justified in returning the plaint for filing before the appropriate forum observing that the court below has got no jurisdiction to entertain the application.

On a bare reading of Section 9 of the Gurdian and Wards Act, it is clear that solitary test for determination of the jurisdiction of the court under Section 9 of the Act is, where the

child “ordinarily resides”. The common ratio, as has been deduced from the judgments cited by both the parties is that the “ordinarily resides” connotes a regularly settled home and not a temporary home where a minor might have been removed by stealth or by compulsion. It is not the place of residence at the time of filing the application under the said Act, which will decisively determine whether particular court has jurisdiction to entertain the proceeding or not.

Here, in the instant case, the ward along with his mother staying at Bhubaneswar, which is reflected from the tenancy agreement and also from the document in respect of his schooling. It appears that the ward is continuing his studies from a school at Bhubaneswar.

The word “residence” is an elastic word of which an exhaustive definition cannot be given. The words “ordinarily resides” in the sub-section (1) of Section 9 means more than a temporary residence. The using of the expression by the legislature “ordinarily resides” makes the intention of the legislature clear that it must mean the actual physical place and not a legal or

constructive residence. Since welfare of the child in all such cases should be the paramount consideration, so legislature consciously avoided in using expression about legal or constructive residence of the ward. Therefore, the expression “the place where the ward ordinarily resides” means the place, where the minor generally resides and expected to reside and it does not connote the place of origin. Of course the place of ordinary residence would depend on facts of each particular case but fact remains that while construing the words “ordinarily resides”, the determining factor would not be the duration of stay but the intention of the parties and it has nothing to do with legal entitlements. If the minor ordinarily resides at a place of his care and custody, which is not illegal, it would not be difficult to perceive, what would be the ordinary place of residence of the ward. In the instant case for pursuing further studies of the child the ward is residing at Bhubaneswar, which is the actual physical place and for the welfare of child, they are expected to stay at Bhubaneswar. It will definitely go against the welfare of the ward if he

is asked to attend Howrah court or Barrackpore court from Bhubaneswar on the date of hearing of the case, merely on the ground that his alleged place of origin is at Howrah.

Therefore, I find that the observation of the Trial court that the plaint should be returned invoking jurisdiction under Order VII Rule 10 of the Code of Civil Procedure does not suffer from any perversity or impropriety, which may call for interference by this court, invoking this court's jurisdiction under Section 227 of the Constitution of India.

In view of the aforesaid discussion, I find no merit in the instant application, and as such, the Revisional Application being C.O. 3782 of 2024 stands dismissed.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)