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CRP. PD. No.658 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.07.2025

Pronounced on: 18.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. PD. No.658 of 2025
and CMP. No.3743 of 2025**

Mohamed Basheeth

Petitioner(s)

Vs

A.Asmath Firdouse

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of GWOP No.19 of 2024 pending on the file of the learned Family Court, Nagapattinam District and quash the same.

For Petitioner : No Appearance

For Respondent : Mr.G.Rajagopalan,
Senior Counsel for
Mr.L.G.Sahadevan



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ORDER

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The revision has been filed by the husband/father, seeking to quash the Guardian OP proceedings in GWOP.No.19 of 2024 on the file of the Family Court in Nagapattinam.

2. Despite sufficient opportunities granted to the revision petitioner, there has been no appearance on the side of the revision petitioner. I proceeded to hear Mr.G.Rajagopalan, learned Senior Counsel for Mr.L.G.Sahadevan, learned counsel appearing for the respondent.

3. Even though the revision could have been dismissed on the ground of non-prosecution, considering that the welfare of a minor child is involved, I have proceeded to advert my attention to the grounds of challenge in the CRP.

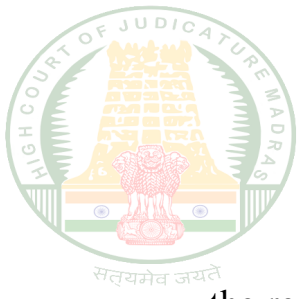
4. It is the case of the revision petitioner that the guardian OP filed before the Family Court, Nagapattinam is without jurisdiction under



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Section 9(1) of the Guardian and Wards Act, 1890, in view of the ordinary residence of the minor being at Singapore. The factual matrix viz., the marriage between the parties, the birth of the child at Singapore on 03.12.2021 and the respondent coming to India on 05.05.2022 are not in dispute.

5. It is the specific allegation of the petitioner that the visa permits the respondent to continuously stay only for a period of 90 days in India during each visit, though the visa is valid until 18.04.2027. Highlighting the said fact, the petitioner contends that the respondent has illegally overstayed in India with the minor child and the Guardian OP filed before the Family Court, Nagapattinam is without jurisdiction. It is further contended that, the child being a citizen of Singapore is entitled to several benefits including superior health care and education there and according to the petitioner, the welfare of the minor, if considered, then the Guardian OP will have to be dismissed.



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6. The learned Senior Counsel Mr.G.Rajagopalan, appearing for the respondent would submit that the residence of the minor is sufficient to confer jurisdiction and even according to the petitioner, the respondent resides only in Nagapattinam, which is the address that is given as the registered address of the respondent in the Civil Revision Petition and when admittedly, the minor resides with the respondent/mother, there is absolutely no infirmity in the mother filing a Guardian OP before the Family Court at Nagapattinam. The learned Senior Counsel would further state that merely because the minor happens to be a Singapore citizen by birth, it cannot imply that the Guardian OP filed here, that is before the Family Court, Nagapattinam is without jurisdiction.

7. The learned Senior Counsel also places reliance on the following decisions:

1. *Ruchi Majoo Vs. Sanjeev Majoo*, reported in (2011) 6 SCC 479;
2. *Mst.Firoza Begum vs Akhtaruddin Laska*, reported in AIR 1963 Assam 193;and



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3. *The High Court of Punjab and Haryana at Chandigarh in Cr.No.3925 of 2024 (O&M) dated 07.01.2025.*

8. In *Ruchi Majoo's* case (referred herein supra), the Hon'ble Supreme Court interpreting the phrase “*where the minor ordinarily resides*” held that it implies something more than a flying visit or a casual stay at a particular place.

9. In *Firoza Begum's* case, (referred herein supra), the Hon'ble Division Bench of the Assam High Court held that a minor residing with the mother for 3 years before the Application for appointment of guardian is filed, would confer jurisdiction on the Court where the mother resides along with the minor children.

10. *The Punjab and Haryana High Court in CR.No.3925 of 2024* has held that jurisdiction of the Court to decide the custody matter of a child is where the child for the time being ordinarily resides and that



when admittedly the child was residing at Jalandhar from 2021 onwards, the petition being filed in November 2022 at Chandigarh would not be proper as the Court at Chandigarh would not have jurisdiction to entertain the petition.

11. I have carefully considered the grounds of challenge by the revision petitioner as well as the arguments advanced by the learned Senior Counsel.

12. Admittedly, it is not in dispute that the respondent lives in Nagapattinam, as can be seen from the fact that even the petitioner has only given the Nagapattinam address as the registered address for service of notice on the respondent. It is also the admitted case of the petitioner that the minor resides with the respondent/mother alone. The petitioner and the respondent are in parallel, fighting a legal battle for dissolution of marriage as well, before the District Munsif, Nagapattinam which has been filed by the respondent/wife.



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13. Section 9(1) of the Guardian and Wards Act, 1890 is extracted for easy reference:

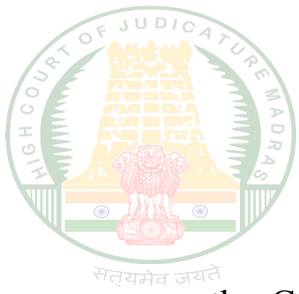
“9. Court having jurisdiction to entertain application.—

(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.”

14. As held by the Hon'ble Supreme Court, the solitary test for determining jurisdiction of the Court under Section 9 of the Act is the ordinary residence of the minor. The Hon'ble Supreme Court has further held that whether the minor being ordinarily residing at a given place is a question of intention, which in turn, is only a question of fact, capable of being tested after enquiry into factual aspects of controversy.



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15. In the light of the above, the present revision petition to quash the Guardian OP proceedings at the threshold is not maintainable. The questions whether the minor can be termed to be ordinarily residing within the jurisdiction of the Family Court, Nagapattinam or whether the ordinary residence of the minor should be construed as Singapore are all disputed questions of fact, for which parties have necessarily lead oral and documentary evidence. A request of the petitioner/husband for quashing the Guardian OP proceedings on the grounds of lack of jurisdiction cannot be entertained under Article 227 of the Constitution of India.

16. In fine, this Civil Revision Petition is dismissed. No costs.
Connected Miscellaneous Petition is also dismissed.

18.07.2025

rkp
Index : Yes / No
Internet : Yes / No
To:
The Judge, Family Court, Nagapattinam



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P.B.BALAJI, J.,

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Pre-delivery order in
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