



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

236

CR-6840-2018 (O&M)
Date of Decision: 10.01.2025

SUMANDEEP KAUR

.... Petitioner

VERSUS

SWARAN SINGH AND ORS

.... Respondents

CORAM: HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Amaninder Preet, Advocate for the petitioner.
(Legal Aid Counsel)

Mr. Abhimanyu Batra, Advocate for respondent No.1.

ALKA SARIN, J. (ORAL)

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 03.08.2018 passed by the learned Additional Civil Judge (Senior Division), Kapurthala whereby an application for rejection of the petition, being not maintainable for want of territorial jurisdiction, was dismissed.

2. Brief facts relevant to the present *lis* are that the petitioner herein was married to Kuldeep Singh – son of respondent No.1 – in the year 2010. On 27.05.2011 a male child was born out of the wedlock. The husband of the petitioner died on 17.07.2013. Thereafter the mother-in-law of the petitioner also expired on 21.08.2014. The petitioner continued to stay in her matrimonial home, however, certain allegations were levelled against the petitioner by her father-in-law regarding her having illicit relations with one Balwant Singh. It is the case set up that it was respondent No.1 (father-in-

law) who, after the death of his wife, kept an evil eye on the petitioner and he even clicked her photographs while she was bathing. He even attempted to rape the petitioner. Finally, with the intervention of respectables and in the presence of the Panchayat, a compromise dated 07.09.2015 was entered into. Thereafter, the petitioner left her matrimonial home and started residing in Jalandhar. Respondent No.1 herein filed a petition under Sections 10 and 24 of the Guardian and Wards Act, 1890 for the custody of the minor child. It was stated in the petition itself that the minor child was residing at Jalandhar. An application was filed by the petitioner herein for dismissal of the petition as not being maintainable for want of territorial jurisdiction though the nomenclature used was “application for dismissal of the present petition as the same is not maintainable for want of territorial jurisdiction”. However, effectively, the same was an application under Order 7 Rule 11 CPC for rejection of the petition for want of territorial jurisdiction. Reply was filed to the said application. Vide the impugned order the application was dismissed holding that there were certain allegations of the child having been removed forcibly from Kapurthala and therefore it would be a matter of evidence as to what would be considered as to where the minor child ordinarily resides. Aggrieved by the same, the present revision petition has been filed.

3. Learned Legal Aid Counsel for the petitioner would contend that the petition itself states that the minor child is residing at Jalandhar and that there is not a whisper in the petition that the child was illegally taken out of the custody of respondent No.1 or was clandestinely removed from

Kapurthala and hence the observations made by the Court are wholly beyond the pleadings. Learned Legal Aid Counsel has referred to Section 9 Sub-Clause (1) of the Guardian and Wards Act, 1890 which clearly states that the jurisdiction would be where the minor ordinarily resides and in the present case the minor, admittedly, is residing at Jalandhar.

4. *Per contra*, learned counsel for respondent No.1 would contend that the minor child was taken away forcibly and clandestinely by the petitioner on the pretext of taking him to the Golden Temple and therefore it would be a matter of evidence as to whether the jurisdiction would lie at Kapurthala or Jalandhar.

5. Heard.

6. Section 9 Sub-Clause (1) of the Guardian and Wards Act, 1890 would read as under:-

*“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.”*

7. In the petition itself it has been admitted that there was a compromise between the parties on 07.09.2015 and thereafter the minor child has been residing with his mother (the petitioner herein) at Jalandhar. Even the address of the child is being given as that of Jalandhar. There is not a whisper in the petition filed under Sections 10 and 24 of the Guardian and Wards Act, 1890 that the child was clandestinely or deceitfully removed

from the custody of respondent No.1 and therefore the observations made by the Court, being wholly perverse, are not sustainable. Section 9(1) very clearly states that the jurisdiction would be where the child ordinarily resides.

8. Further, the Hon'ble Division Bench of this Court vide judgment dated 27.08.2024 passed in **FAO-2294-2024** titled as **Rajesh V/s Komal** has decided the substantial question of law as regards the interpretation of the expression "the place where the minor ordinarily resides" referred to in Section 9(1) of the Guardian and Wards Act, 1890 and it was held as under:

"15. A conjoint reading of all the above referred to statutory provisions shows that the intention of the legislature in Section 9 with respect to the jurisdiction is that application for the guardianship of the person of the minor shall lie to the District Court having jurisdiction in the place where the minor is actually and physically residing and not as per the proviso to Section 6(a) of Hindu Minority and Guardians Act, 1956."

9. In the present case there can be no manner of doubt that the child is deemed to be ordinarily residing with his mother at Jalandhar. That being so, it cannot be said that the territorial jurisdiction would be anywhere but Jalandhar and that the petition of respondent No.1 for custody of the minor child shall lie to the District Court/Family Court having jurisdiction in

the place i.e. at Jalandhar where the minor child is physically and actually residing.

10. In view of the above, the impugned order cannot be sustained and the same is accordingly set aside. Consequently, the application filed by the petitioner is allowed and the petition filed by respondent No.1 stands rejected to be presented before the District Court/Family Court concerned.

11. It is made clear that respondent No.1 would be at liberty to present the petition before the Court concerned.

12. Pending applications, if any, also stand disposed off.

10.01.2025

Aman Jain

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: Yes/No