

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.654 of 2024

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Bishwas Paswan Son of Late Kare Paswan Resident of Vill.- Sangrampur,
P.O.-Amaia, P.S.- Asarganj, District- Munger.

... .. Appellant/s

Versus

1. Sri Ram Paswan Son of Late Nandlal Paswan Vill.- Dayal Tola, Balupar,
P.O.- Damodarpur, P.S. and Town- Lakhisarai, District- Lakhisarai.
2. Indu Kumari, Wife of Sri Ram Paswan Vill.- Dayal Tola, Balupar, P.O.-
Damodarpur, P.S. and Town- Lakhisarai, District- Lakhisarai.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Anju Kumari @ Anju Narain, Advocate
For the Respondent/s : Mr. Birendra Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

10 24-03-2026 The instant appeal challenges an order dated

20.05.2024 passed by the learned Principal Judge, Family Court,

Munger in Guardianship Case No.15 of 2023 holding, inter-alia,

that the said Court does not have territorial jurisdiction under

Section 9(1) of the Guardians and Wards Act, 1890. Section

9(1) runs thus:-

“9.(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. It is held by the Trial Court that the minor



ordinarily resides within the jurisdiction of Lakhisarai and the learned Principal Judge, Family Court, Munger does not have any jurisdiction to entertain Guardianship Case No.15 of 2023. Therefore, the application was dismissed on the ground of lack of territorial jurisdiction.

3. Factual aspect as disclosed from the memorandum of appeal is that the marriage of the mother of the minor, namely, Rupa Kumari, since deceased, was solemnized with the applicant/appellant-Bishwas Paswan on 03.12.2017. In their wedlock, a female child was born on 02.03.2022. After her birth, both the baby and the mother, since deceased, used to reside at her paternal home in Munger. The mother of the child committed suicide on 14.08.2022, since the birth of the child till date, she is residing with her maternal grandparents at Lakhisarai. Before the Trial Court, a question was raised as to whether the Trial Court has territorial jurisdiction at Munger on the ground that the father of the child being the natural guardian is the permanent resident of Munger.

4. It is clearly laid down in *Amal Saha Vs. Smt. Vashna Saha*, reported in *AIR 1988 Gauhati 2022* that ordinarily resident does not mean “residence at the time of application”, rather, the minors recent removal from the place



where he ordinarily resides would rendered nugatory the provisions of the section if cognizance of the case is taken. The place where the guardian, (in the instant case the appellant) resides cannot be presumed to be the place where the minor is ordinarily resident.

5. On the contrary, where the minor is found to be residing, the said place is to be considered as the place of territorial jurisdiction.

6. In the instant case, it is admitted that the minor resides from his date of birth, till date with her maternal grandparents at Lakhisarai. Therefore, the learned Principal Judge, Family Court, Lakhisarai shall have the jurisdiction to try the case relating to custody of the child.

7. At this stage, a question arises as to whether the learned Principal Judge, Family Court at Munger can dismiss the suit for want of territorial jurisdiction.

8. Our considered view relying on the provision contained in Order-VII Rule-10 and Order-VII Rule-10(A) of the C.P.C. r/w Sub-Section 3 of Section 9 of the Act-VIII of 1890 that in case of want of territorial jurisdiction, the Court where the application/plaint is filed is under obligation to return the plaint to the applicant with the above observation to file the



application in proper Court i.e. before the learned Principal Judge, Family Court at Lakhisarai.

9. A suit/application cannot dismissed for want of territorial jurisdiction.

10. For the reasons stated above, the learned Principal Judge, Family Court at Munger is directed to return the plaint within fifteen days from the date of this order to the learned Advocate on behalf of the applicant/appellant with permission to file the said application before the learned Principal Judge, Family Court at Lakhisarai for Trial and disposal.

11. With the above order, the instant appeal is thus, disposed of.

(Bibek Chaudhuri, J)

(Chandra Shekhar Jha, J)

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