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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE H.P.SANDESH

CIVIL REVISION PETITION NO.273 OF 2023 (IO)

BETWEEN:

1. NASIMA BANU,
W/O MUNEER HUSEEN,
AGED ABOUT 60 YEARS.
2. M.M. MUNEER HUSSAIN,
S/O LATE ZAHEER AHAMAD,
AGED ABOUT 65 YEARS.

BOTH ARE R/AT COFFEE PLANTER,
VATEHALLI, AREHALLI HOBLI,
SAKALESHPURA TALUK,
HASSAN DISTRICT-573201.

...PETITIONERS

(BY SRI SATHISHA D.J., ADVOCATE)



AND:

1. SHABAS KHAN,
S/O FIROZE KHAN,
AGED ABOUT 37 YEARS
R/A 2ND CROSS, ADARSHA NAGAR,
HASSAN-573201.
2. JAREEN TAJ,
W/O FIROZ KHAN,
AGED ABOUT 62 YEARS,
R/A 2ND CROSS,
ADARSHA NAGAR,
HASSAN-573201.



3. FAUZIA KHANUM,
WO APSAR ALI,
AGED ABOUT 38 YEARS,
R/A NO.779, 17TH 'B' MAIN ROAD,
5TH BLOCK, RAJAJINAGAR,
BANGALORE-560010.
4. NAZIA KHANAM,
S/O FIRZON KHAN,
AGED ABOUT 36 YEARS,
R/A NO.1109, TODA LAYOUT,
4TH CROSS, RAJEEV GANDHI NAGAR,
TUMAKURU-572101.

...RESPONDENTS

(BY SRI VIJAYKUMAR B, ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 17.04.2023 PASSED IN G AND WC NO.4/2023 ON THE FILE OF THE II ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, HASSAN DISMISSING THE IA NO.3 FILED UNDER ORDER 7 RULE 11 OF CPC, FOR SEEKING REJECTION OF THE PETITION FOR WANT OF JURISDICTION.

THIS PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

This matter is listed for admission. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. This revision petition is filed questioning the order passed by the Trial Court in dismissing I.A.No.3 in G and WC No.4/2023 dated 17.04.2023



3. The respondents in G and WC No.4/2023 filed I.A.No.3 under Order 7 Rule 11 of CPC praying the Court to dismiss the petition for want of jurisdiction. In support of the application, an affidavit is sworn to by respondent No.2 that the respondents and their grandchildren are residing at Arehalli Village and the petitioners are not residing within the jurisdiction of the Court, as such the Family Court has got jurisdiction to entertain this petition. The cause of action also not arose within the jurisdiction of the Court. This petition is filed based on false facts stated by the petitioners and hence prayed the Court to dismiss the petition.

4. In response to the application, the objection statement was filed by the petitioners contending that the District Court has got jurisdiction under the provisions of the Guardians and Wards Act, 1890 ('the Act' for short) and this case has been made over to the said Court which has got jurisdiction to decide this petition. The Trial Court having considered the pleadings of the parties, framed the point for consideration whether I.A.No.3 filed by the



respondents under Order 7 Rule 11 of CPC seeking rejection of the petition for want of jurisdiction deserves to be allowed. The Trial Court having considered the grounds urged in the application as well as the objection statement, extracted Section 9 of the Act, wherein it is stated with regard to the Court having jurisdiction to entertain the application and also taken note of the fact that originally the petition was filed before the District Court and the same was made over to the said Court by virtue of Section 4A of the Act. Hence, comes to the conclusion that the Court is having jurisdiction to entertain the petition. Being aggrieved by the said order, the present revision petition is filed.

5. The main contention of the learned counsel for the petitioners before this Court is that ought to have filed the petition before the Family Court and not before the District Court and the very order has resulted in miscarriage of justice. The learned counsel submits that minor children are residing in Arehalli along with the petitioners and minor child was studying in LKG in Euro



Kids School and study certificate is also produced. The Family Court is having jurisdiction to entertain the G and WC petition and not the District Court. The order passed by the Trial Court is erroneous and not in accordance with law. Hence, it requires interference of this Court.

6. Per contra, the learned counsel for the respondents would vehemently contend that the petition is filed before the District Court and the relief sought is under the Guardians and Wards Act and Section 9 of the Act is very clear with regard to the territorial jurisdiction and the petition is filed under Section 10 of the Act, wherein sought for the relief of appointment of guardian and the Trial Court rightly taken note of Section 10 of the Act and rightly comes to the conclusion that jurisdiction vests with the District Court and accordingly the petition is filed before the District Court and matter was assigned to the competent Court and the competent Court passed the order.

7. The learned counsel for the respondents in support of his argument relied upon the judgment of the Apex Court in the case of **RUCHI MAJOO v. SANJEEV**



MAJOO reported in **2011 (6) SCC 479** and brought to the notice of this Court the principles laid down in the judgment with regard to the territorial jurisdiction under Section 9 of the Act. Determination of – test for, stated – Test for determining jurisdiction, held, is place of ordinary residence of the minor and intention to make that place one’s ordinary abode and Section 9(1) of the Act also discussed in the judgment. The Apex Court held that solitary test for determining the jurisdiction of the Court under Section 9 is the “ordinary residence” of the minor. The expression used is “where the minor ordinarily resides”. Whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy.

8. The learned counsel also relied upon the judgment of the Delhi High Court in the case of **MUKAND SWARUP v. MANISHA JAIN** reported in **2009 Supreme**



(Del) 483, wherein the Delhi High Court discussed with regard to Section 9 of the Act and held that both the minor children are ordinarily residents of Delhi and temporary shifting or removal of children by petitioner to Chennai cannot make Chennai the established or permanent home of the children. Held that the Delhi Courts have the territorial jurisdiction.

9. The learned counsel referring these judgments would contend that under Section 9 of the Act, the jurisdiction vests with the District Court and accordingly the Trial Court passed the order and the same does not suffer from any illegality.

10. Having heard the learned counsel for the petitioners and the learned counsel for the respondents and also on perusal of the material available on record, particularly considering the address mentioned in the petition, both the petitioners and the respondents are residing within the jurisdiction of Hassan District and on perusal of the application, the same is filed before the District and Sessions Court. The same is numbered as G



and WC No.4/2023 and the same is assigned to the Trial Court to dispose of the same in accordance with law under Section 4A of the Act. It is not in dispute that the petition is filed before the District and Sessions Court and the only contention of the learned counsel for the petitioners is that ought to have filed the same before the Family Court. It is not in dispute that the petition is filed under the provisions of Section 10 of the Act and also Sections 10, 17, 19, 25 read with 102 of the Muslims Act. The petitioners are not disputing the fact that the same is filed before the District Court. The only contention is that in view of Section 8 of the Family Courts Act, 1984, there is exclusion of jurisdiction and pending proceedings.

11. Section 8 of the Family Courts Act is very clear that no district court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section. Hence, this Court has to take note of Section 7 of the Family Courts Court with regard to the



jurisdiction is concerned and explanation to Section 7 is very clear that the suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage; (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person; (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them; (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship; (e) a suit or proceeding for a declaration as to the legitimacy of any person; (f) a suit or proceeding for maintenance; (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor. Sub-clause (2) of Section 7 is also very clear that subject to the other provisions of this Act, a Family Court shall also have



and exercise- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and such other jurisdiction as may be conferred on it by any other enactment.

12. Having considered Section 8 as well as explanation to Section 7 of the Family Courts Act, Section 7(g) is very clear that a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor, the Family Court is having the power to consider the same. It is not in dispute that the present petition is filed praying the Court for appointment of the guardian in respect of a minor. When the Family Courts Act is very clear with regard to the jurisdiction is concerned under Section 7 and when Section 7(g) is very clear with regard to a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor and when the Family Court is established to deal with all these issues involved between the parties, the Trial



Court has not considered the same and only considered Section 9 of the Act and comes to the conclusion that the Court is having the power. Section 8 of the Family Courts Act is very clear with regard to exclusion of jurisdiction and pending proceedings where a Family Court has been established for any area. The very proviso of Section 8(a) is very clear that no district court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation to that sub-section. Though an application is filed under Order 7 Rule 11 of CPC, it attracts Order 7 Rule 10 of CPC for want of jurisdiction and not Order 7 Rule 11 of CPC. Hence, it is clear that the Trial Court committed an error in dismissing the application and ought to have allowed the petition and directed the Court to return the petition to file the same before the Family Court for want of jurisdiction and hence the order requires to be set aside and revision petition requires to be allowed.



13. In view of the discussions made above, I pass the following:

ORDER

- (i) The petition is allowed.
- (ii) The impugned order dated 17.04.2023, passed in G and WC No.4/2023, is hereby set aside and I.A.No.3 filed under Order 7 Rule 11 of CPC is treated as application under Order 7 Rule 10 of CPC and allowed and consequently the Court is directed to return the petition to submit the same before the Family Court of Hassan District.

**Sd/-
JUDGE**

MD
List No.: 1 Sl No.: 28