



CNR: KAHC010141092026

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

PRESENT

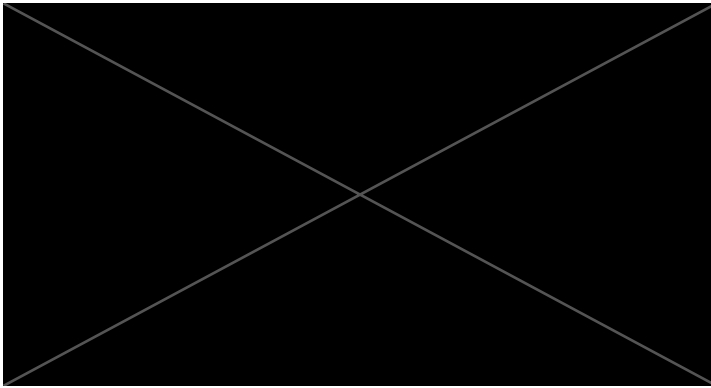
THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

MISCELLANEOUS FIRST APPEAL NO. 1492/2026(FC)

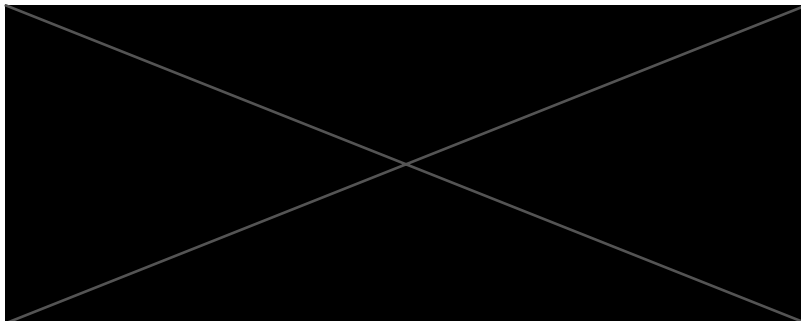
BETWEEN:



...APPELLANT

(BY SRI. NARESH KUMAR JAIN.,ADVOCATE)

AND:



...RESPONDENT

(BY SRI. SHIVANANDA REDDY R V.,ADVOCATE)





NC: 2026:KHC:44975-DB
MFA No. 1492 of 2026

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THIS MFA FILED U/S.47 OF GUARDIANS AND WARDS ACT-1890 R/W SECTION.19(1) OF FAMILY COURT ACT AND ALSO UNDER ORDER XLIII RULE 1(A) R/W SECTION.151 OF CPC. AGAINST THE JUDGMENT AND DECREE DT.06.01.2026 PASSED IN G AND WC NO.18/2025 ON THE FILE OF THE III ADDL. PRL. JUDGE, FAMILY COURT, BENGALURU. RETURNING THE PETITION TO THE PETITIONER TO FILE PETITION BEFORE THE PROPER COURT OF JURISDICTION.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

The guardianship and custody of a child of 4 years 10 months old is the subject-matter of the anxious concern of this Court in this appeal. The deepest consideration for the welfare of the child is paramount in our minds when we dispose of this appeal.

2. The petitioner-mother of a tender-aged child has preferred this appeal, being aggrieved by the order the order dated 06.01.2026 passed by the Court of III



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Additional Principal Judge, Family Court at Bengaluru ('the Family Court' for short), in G & WC No.18/2025, whereby the Family Court has returned the petition with a direction to present the same before the appropriate Court having jurisdiction over the place where the minor child is presently residing with the father.

3. For the sake of convenience, the parties shall be referred to as they were arrayed before the Family Court.

4. Brief facts of the case are, the petitioner-mother approached the learned Principal Judge, Family Court, Bangalore, by filing G & W.C. No.18 of 2025 under Section 7 of the Guardians and Wards Act, 1980, read with the relevant provisions of the Family Courts Act, 1984 and Section 151 of the Code of Civil Procedure, seeking custody of her minor son. The petition was accompanied by an application under Section 12 of the Guardians and Wards Act seeking interim custody of the minor child, read



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with Section 26 of the Hindu Marriage Act and Section 151 of the Code of Civil Procedure.

5. It is the case of the petitioner that she is the legally wedded wife of the respondent and that their marriage was solemnised on 06.07.2018. Out of the wedlock, two sons were born. The elder son, Master Advik Raj P. Veerapur, was aged about six years at the time of filing of the petition, while the younger son, Master Anwith Dev P. Veerapur, was born on 11.10.2021 and was aged about three and a half years. According to the petitioner, on account of differences between the parties, she was residing at Bangalore along with the minor children, whereas the respondent was residing at Ilkal Taluk, Bagalkot District.

5.1. It is further the case of the petitioner that the respondent used to visit Bangalore on the pretext of meeting the children. On 03.09.2023, the respondent came to the petitioner's residence and took the younger



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child with him, stating that he would take the child to his native place and return him within fifteen days. However, the respondent did not return the child as promised. When the petitioner approached him and requested that the child be returned to her custody, the respondent refused to do so. The petitioner thereafter approached the Child Welfare Committee, Karnataka, and also lodged a complaint before the National Commission for Women and the Women Police Station, Basavanagudi, Bangalore, seeking assistance for securing the custody of her child.

5.2. The petitioner also caused a legal notice dated 09.05.2024 to be issued to the respondent, calling upon him to hand over custody of the minor child. The respondent did not reply to the said notice. In the meantime, the petitioner instituted M.C.No.3149 of 2024 seeking divorce and also filed a maintenance petition in Crl.Misc.No.976 of 2025 against the respondent. Both proceedings were pending before the III Additional

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Principal Family Court, Bangalore. The petitioner had also approached this Court by filing W.P.(H.C.) No.94 of 2024 seeking custody of the minor child. However, the said proceedings did not result in restoration of custody and the petitioner was directed to work out her remedy before the appropriate Court.

5.3. It is in the aforesaid circumstances that the petitioner instituted G. & W.C. No.18 of 2025 before the Family Court, Bangalore, seeking custody of her younger son and also filed an application seeking interim custody of the child. On service of notice, the respondent appeared before the Court and disputed its territorial jurisdiction. The respondent filed his objections to the application under Section 12 of the Guardians and Wards Act, read with Section 26 of the Hindu Marriage Act and Section 151 of the Code of Civil Procedure. He also filed a memo contending that the petition was not maintainable before the Family Court at Bangalore, as the minor was presently



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residing with him at Ilkal Taluk, Bagalkot District and therefore, in terms of Section 9 of the Guardians and Wards Act, the Court having jurisdiction over the place where the minor ordinarily resided alone could entertain the petition.

6. The Family Court, on consideration of the rival contentions, formulated the following point for consideration:

"Whether this Court is having jurisdiction on the point of ordinary residence of the child and what order?"

7. The Family Court answered the said point in the negative. It proceeded on the basis that the respondent had taken away the child from the petitioner on 03.09.2023 and had taken him to Ilkal Taluk, Bagalkot District, where the respondent was residing. The Family Court also observed that the custody of the child with the respondent could not, at that stage, be held to be unlawful. Though it was admitted that the child had earlier



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been residing with the petitioner at Bangalore, the Family Court observed that the allegation of forcible removal had not been established at the initial stage. It further proceeded on the footing that once the question of jurisdiction was raised, any order passed by a Court having no jurisdiction would be a nullity.

8. Relying upon the provisions of the Guardians and Wards Act, the Family Court consequently held that the petition was required to be presented before the Court having jurisdiction over the place where the minor ordinarily resided and accordingly returned the petition to the petitioner.

9. Aggrieved by the said order, the petitioner has preferred the present appeal.

10. Learned counsel for the petitioner has contended that the impugned order has been passed in a mechanical manner without properly appreciating the



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circumstances in which the minor child came to be in the custody of the respondent. According to the petitioner, the child was ordinarily residing with her at Bangalore and was taken away from her custody by the respondent. Therefore, the subsequent residence of the child with the respondent at Ilkal Taluk, Bagalkot District cannot, by itself, change the ordinary residence of the minor so as to defeat the jurisdiction of the Family Court at Bangalore.

10.1. It is further contended that the petitioner had never voluntarily parted with the custody of the child. The respondent had taken the child from Bangalore on the representation that he would return the child within fifteen days. Having failed to return the child thereafter and having refused to hand over custody despite repeated requests, the respondent could not be permitted to rely upon his own act of taking the child away to contend that the Family Court at Bangalore had no jurisdiction. The petitioner submits that she has been making every



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possible effort to secure the custody of her minor child and has been constrained to approach different authorities and Courts in that regard.

10.2. It is also contended that the matrimonial proceedings between the parties are already pending before the Family Court at Bangalore. The custody dispute has arisen in the background of the matrimonial dispute and during the pendency of the said proceedings. The learned Family Court, which was already seized of the matrimonial proceedings between the parties, ought to have taken this circumstance into consideration instead of returning the custody petition merely because the respondent had subsequently taken the child to another place. It is urged that such an approach would result in multiplicity of proceedings and cause further hardship to the petitioner.

10.3. The petitioner further contends that the paramount consideration in a proceeding relating to



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custody is the welfare and best interests of the minor. The child is of tender years and, according to the petitioner, she is in a position to provide the care and protection required by the child as his mother. It is her grievance that, having been deprived of the custody of her child, she has been running from pillar to post to secure his return. It is therefore urged that the learned Family Court ought to have considered the circumstances in which the child was taken away, the child's earlier residence with the mother at Bangalore and his welfare, instead of returning the petition at the threshold on the basis of his present physical location.

11. On the other hand, learned counsel for the respondent has contended that the minor child is presently residing with him at Ilkal Taluk, Bagalkot District and that, in view of Section 9 of the Guardians and Wards Act, the Court having jurisdiction over the place where the minor ordinarily resides alone would have jurisdiction to



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entertain the petition. It is contended that the custody of the child with the respondent cannot be termed unlawful merely on the basis of the allegation made by the petitioner and that the Family Court was therefore justified in returning the petition for presentation before the appropriate Court.

12. Having regard to the rival submissions and upon consideration of the material on record, the point that arises for our consideration in the present appeal is:

"Whether, in the facts and circumstances of the case, the Family Court was justified in returning the petition filed by the mother seeking custody of the minor child on the ground that the child was residing with the father outside Bangalore i.e., in Bagalkot, without considering that the child was ordinarily residing with the mother at Bangalore?"

13. It is not in dispute that the minor child was residing at Bangalore with the mother and that the father subsequently took the child away from Bangalore to Balgalkot District, where he was residing. Section 9 of the Guardians and Wards Act, 1890, confers jurisdiction upon



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the Court where the minor ordinarily resides. The expression used in the provision is "*ordinarily resides*" and not the place where the minor happens to be found or is kept on the date on which the petition is presented. Therefore, the mere fact that the father has taken the child to another place cannot, by itself, be determinative of the question of ordinary residence.

14. The ordinary residence of a minor has to be determined having regard to the facts and circumstances of each case. The Court is required to consider the circumstances in which the child was residing at a particular place, the duration of such residence and the circumstances in which the child came to be removed from that place. In the present case, the child was residing with the mother at Bangalore and according to the mother, was taken away by the father from Bangalore to Ilkal Taluk, Bagalkot District. Such subsequent removal cannot, by itself, result in the ordinary residence of the child being



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changed so as to defeat the jurisdiction of the Court which otherwise had jurisdiction to consider the question of custody.

15. If the contention of the father is accepted merely on the basis of the present physical location of the child, it would enable a parent to unilaterally remove a minor from the place where the child was ordinarily residing and thereafter contend that the Court at that place has no jurisdiction. Such a course cannot be permitted to operate to the prejudice of the other parent, particularly when the custody of a minor child is involved.

16. There is yet another circumstance which, in our opinion, assumes significance. The matrimonial proceedings between the parties are admittedly pending before the Family Court at Bangalore in M.C.No.3149/2024. The dispute regarding the custody of the minor child has arisen during the subsistence of the said proceedings and is closely connected with the



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matrimonial dispute between the parties. The Family Court, being already seized of the matrimonial proceedings, ought to have considered this circumstance while examining the question of custody and jurisdiction. The object of constituting Family Courts is to secure a speedy and effective resolution of disputes relating to marriage and family affairs. Requiring the mother to institute separate proceedings at another place merely because the father has subsequently taken the child there would result in multiplicity of proceedings and may also lead to conflicting orders concerning the same child.

17. The fact that the matrimonial proceedings are pending before the Family Court at Bangalore does not, by itself, conclude the question of territorial jurisdiction under Section 9 of the Guardians and Wards Act, 1890. However, it is certainly a relevant circumstance which, when considered along with the fact that the child was residing at Bangalore with the mother and was subsequently taken



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away by the father, required the Family Court to examine the matter more closely instead of returning the petition at the threshold.

18. The age of the child is another circumstance which cannot be lost sight of. The minor is aged about 4 years and 10 months and has therefore not completed five years of age. Section 6(a) of the Hindu Minority and Guardianship Act, 1956, provides that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The provision gives statutory recognition to the principle that a child of tender years would ordinarily be better cared for in the custody of the mother.

19. The Hon'ble Supreme Court in ***Roxann Sharma v. Arun Sharma***¹, while considering Section 6(a) of the Hindu Minority and Guardianship Act, has held that the custody of an infant or a tender-aged child should

¹ (2015) 8 SCC 318



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ordinarily be with the mother unless the father is able to disclose cogent reasons showing that the welfare and interest of the child would be prejudiced if the child continues in the custody of the mother. The Hon'ble Supreme Court has further observed that where the child is below five years of age, it is for the father to plead and establish the mother's unsuitability.

20. In the present case, there is no finding recorded by the Family Court that the mother is unfit or unsuitable to have the custody of the child. On the contrary, the child was admittedly residing with the mother at Bangalore before the father took the child away. At this stage, therefore, the statutory preference in favour of maternal custody under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, assumes significance.

21. It is true that the paramount consideration in every proceeding relating to custody is the welfare of the minor and that neither parent can claim custody as an

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absolute right. At the same time, while considering the welfare of a child of tender years, the statutory preference contained in Section 6(a) of the Hindu Minority and Guardianship Act, cannot be ignored. The Court is required to consider whether there are any circumstances warranting departure from the ordinary rule of maternal custody.

22. The Family Court, instead of examining these aspects, has returned the petition solely on the ground that the child is presently residing with the father outside Bangalore in Ilkal Taluk, Bagalkot District. In our view, such an approach is too narrow. The Court was required to examine where the child ordinarily resided, the circumstances in which the child came to be at the present place and more importantly, whether the father could take advantage of his own act of removing the child from Bangalore.

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23. The welfare of the child cannot be made to depend upon the unilateral act of either parent. The Court must look to the circumstances as they existed before the dispute arose and not permit a party to create a different forum merely by taking the child from one place to another. The custody proceedings concern the welfare of the minor and are not proceedings in which the competing rights of the parents alone are required to be adjudicated.

24. In our view, an application seeking custody of a minor can be instituted before the Court having jurisdiction over the place where the minor was ordinarily residing immediately prior to his or her removal. In other words, the jurisdiction cannot be defeated merely because, during or after the dispute, one of the parents has removed the minor to another place. The relevant consideration is the place where the minor would have continued to reside but for such removal.



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25. Section 9 of the Guardians and Wards Act, 1890, employs the expression "where the minor *ordinarily resides*". The expression "*ordinarily resides*" cannot be equated with the place where the minor happens to be found or is temporarily kept. Ordinary residence connotes a regular and settled home and is something more than a temporary or transitory residence. The Court, while determining the ordinary residence of a minor, is required to examine the circumstances in which the minor was residing and the nature and duration of such residence.

26. Where the parents are residing together, the ordinary residence of the minor would ordinarily be the place where the parents have their settled residence. Even where the parents are living separately, the ordinary residence of the minor has to be determined with reference to the circumstances of the case, including the place where the minor was actually residing and being brought up prior to the dispute or removal.



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27. A minor cannot be said to have changed his or her ordinary residence merely because one of the parents, during the subsistence of the dispute, takes the child to another place and keeps the child there. If such removal were permitted to determine jurisdiction, the parent removing the child would effectively be permitted to choose the forum for adjudication of the custody dispute. Such a consequence cannot be accepted.

28. Therefore, where the minor was ordinarily residing at Bangalore with the mother and the father subsequently removed the minor from Bangalore, the mere fact that the minor is thereafter residing with the father at another place would not, by itself, oust the jurisdiction of the Court at Bangalore. The question has to be examined with reference to the place where the minor was ordinarily residing and where the minor would have continued to reside but for the subsequent removal.



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29. In the present case, therefore, the fact that the minor is presently residing with the father outside Bangalore in Ilkal Taluk, Bagalkot District cannot be treated as conclusive of the question of territorial jurisdiction. The Family Court was required to examine, whether Bangalore continued to constitute the ordinary residence of the minor, having regard to the child's residence with the mother at Bangalore and the circumstances in which the father removed the child from Bangalore.

30. Having regard to the fact that the minor child was ordinarily residing at Bangalore with the mother, that the child was subsequently taken away by the father from Bangalore to Ilkal Taluk, Bagalkot District, that the matrimonial proceedings between the parties are already pending before the Family Court at Bangalore and further having regard to the tender age of the child, we are of the



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view that the Family Court was not justified in returning the petition at the threshold.

31. The impugned order, therefore, deserves to be set aside. The matter requires consideration by the Family Court on its merits, including the prayer for interim custody, after taking into consideration the ordinary residence of the minor, the circumstances in which the child was removed from Bangalore, the pendency of the matrimonial proceedings and the statutory preference in favour of the mother under Section 6(a) of the Hindu Minority and Guardianship Act, 1956. Needless to observe, while considering the matter, the paramount consideration shall be the welfare and best interests of the minor child. Accordingly, we pass the following;

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order returning the petition is hereby set aside.



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(iii) The petition filed by the mother is restored to the file of the Family Court at Bangalore for consideration and disposal in accordance with law.

(iv) The Family Court shall also consider the prayer for interim custody, if pending, bearing in mind the tender age of the minor and the principles governing custody of a child below five years of age.

(v) The parties are directed to appear before the Family Court on **02.09.2026** without further notice.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 1 Sl No.: 17