

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 14 OF MARCH, 2022

CIVIL REVISION No. 433 of 2021

Between:-

**AKHILESH ANJANA S/O INDUSINGH JI ANJANA , AGED ABOUT 34
1. YEARS, OCCUPATION: AGRICULTURIST DHARMAT TEH.
DEPALPUR (MADHYA PRADESH)**

**ADITYA ANJANA MINOR THR NATURAL GUARDIAN AND
FATHER SHRI AKHILESH ANJANA S/O INDUSINGH JI ANJANA ,
2. AGED ABOUT 34 YEARS, OCCUPATION: AGRICULTURIST
DHARMAT TEHSIL DEPALPUR DIST INDORE (MADHYA
PRADESH)**

.....PETITIONERS

(BY SHRI SAPNESH JAIN, ADVOCATE)

AND

**KAVITA ANJANA W/O AKHILESH ANJANA , AGED ABOUT 24
YEARS, OCCUPATION: HOUSEHOLD WORK PRESENTLY
RESIDING AT VILLAGE DONGLA TEH. MAHIDPURA (MADHYA
PRADESH)**

.....RESPONDENT

*This revision coming on for admission this day, the court passed
the following:*

ORDER

1. By this revision preferred under Section 115 of CPC the petitioners/non-applicants have challenged the order dated 30/10/2021 passed in MJC No.5/2021 by Iind Additional District Judge, Mahidpur, District-Ujjain whereby their application under Order 7 Rule 11 of CPC for rejection of the petition filed by the respondent/applicant under Section 7/25 of the Guardians and Wards Act, 1890 (which shall be referred herein after as “the Act, 1890”) has been rejected.

2. The respondent/applicant has filed an application under Section 7/25 of the Act, 1956 before the Court below against the

petitioners/non-applicants seeking custody of her minor child i.e. non-applicant No.2 namely Aditya Anjana. She has submitted that she and non-applicant No.1 were married on 30/01/2013. Out of their wedlock non-applicant No.2 was born who is presently aged 3 years and is living with non-applicant No.1. On disputes arising between them, on 02/03/2020 non-applicant No.1 asked the applicant to leave the matrimonial home and custody of non-applicant No.2 was refused to be handed over to her. Since the applicant refused to leave, non-applicant No.1 took her in a four wheeler and left her at her parents place and snatched non-applicant No.2 from her who has ever since been residing with him.

3. In her application the applicant has stated that since she is residing at Mahindpur, District-Ujjain the Court at Mahindpur has territorial jurisdiction to entertain the application. Upon service of summons upon them the non-applicants entered appearance and filed an application under Order 7 Rule 11 of CPC for rejection of the application under Section 7/25 of the Act, 1956 on the ground that Court at Mahidpur, District-Ujjain has no territorial jurisdiction to entertain the same.

4. By the impugned order the said application has been rejected by the trial Court by observing that the territorial jurisdiction of the Court shall be where the ward is ordinarily residing and the question as to where the ward was on the date of the alleged incident dated 02/03/2020 when he was allegedly forcibly taken by non-applicant No.1 is a matter of evidence as he has been stated by the applicant to have been with her which has not been denied by non-applicant No.1.

5. Learned counsel for the non-applicants submits that the application filed by the applicant at Mahidpur, District-Ujjain suffers from lack of territorial jurisdiction. The application with respect to guardianship of person of minor can be filed only before the District Court having jurisdiction which is the place where the minor ordinarily resides. The non-applicant No.2 is residing at Tehsil-Depalpur,

District-Ujjain hence the Court at Depalpur alone would have the territorial jurisdiction in the matter. Reliance has been placed upon the decision of the Hon'ble Supreme Court in the matter of **Ruchi Majoo vs. Sanjeev Majoo reported in (2011) 6 SCC 479** wherein it has been laid down that the solitary test for determining the jurisdiction of the Court under Section 9 is the “ordinary residence” of the applicant. It has further been held that the use of word “resides” implies something more than a flying visit to, or casual stay at a particular place.

6. I have heard the learned counsel for the non-applicants and have perused the record.

7. As per the pleadings made by the applicant in her application under Section 7/25 of the Act, 1956, on 02/03/2020 non-applicant No.1 took her and non-applicant No.2 to the house of parents of the applicant and forcibly left her over there. At that time the non-applicant No.2 was with the applicant who was forcibly snatched by non-applicant No.1 and was taken by him to his house and has since then been staying there against his wishes.

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

9. In **K.C. Sashidhar vs. Roopa AIR 1993 KAR 120** relying upon the case of **Mst. Firoza vs. Akhtaruddin AIR 1963 Assam 193** it was held as under :-

“4. Invariably, a minor child that too at the age of 10 to 11 months is expected to be with the custody of the mother. So the words "ordinarily resides" should be construed as the place where the mother resides before the presentation of the petition. It is an admitted fact that, in the instant case, the mother was residing at Mysore

when she presented the petition at Mysore seeking custody of the child. Further, it is to be noted that she has alleged in her petition circumstances under which the child was forced to be left in the custody of the father. When such is the case, the place of residence has to be construed as the place where mother resided before presenting the petition. In view of that, the finding given by the Court below that the petition filed by the petitioner, namely the mother, at Mysore, having jurisdiction does not suffer from any legal infirmities. In **Mst. Firoza Begum v. Akhtaruddin Laskar AIR 1963 Assam 193** wherein the Assam High Court observed :-

"It is contended by Mr. Chose that the expression "ordinarily resides", does not mean casual or factual residence of the minors at the time of the application being made, and that normally the residence of the minor should be taken as the place where the legal guardian is residing..... That the expression "where the minor ordinarily resides" appears to have been deliberately used to exclude places to which the minor may be removed at or about the time of the filing of the application for the enforcement of the guardianship and custody of the minor, and that the phrase "ordinarily resides" indicates ordinary residence even at the time of the presentation of the application under Section 25 of the Act, and that the emphasis is undoubtedly on the minor's ordinary place of residence."

10. In the present case also non-applicant No.2 who is aged about 3 years is expected to be with the custody of his mother i.e. the applicant. The words "ordinarily resides" shall have to be construed as the place where the applicant resides before presentation of the petition. In her petition the applicant has specifically alleged circumstances under which the non-applicant No.2 was forced out of her custody by non-applicant No.1. In such case, the place of residence of non-applicant No.2 has to be construed as the place where the applicant is residing before presentation of the application i.e. Tehsil-Mahindpur, District-Ujjain. As per the applicant, the non-applicant No.2 has been removed by non-applicant No.1 from her custody prior

to filing of the application for guardianship. The ordinarily place of residence of non-applicant No.2 hence would be the place where the local guardian i.e. applicant is residing. It cannot be disputed that since non-applicant No.2 is aged 3 years, applicant would be his natural guardian. In view of the aforesaid factual situation, the judgment of Hon'ble Supreme Court in the matter of **Ruchi Majoo (Supra)** is distinguishable and does not help the non-applicants in any manner.

11. As a result, it is held that the trial Court has not committed any error in rejecting the application under Order 7 Rule 11 of CPC filed by the non-applicants. The revision being devoid of merits is hereby **dismissed.**

(Pranay Verma)
Judge

Aiyer*