
(1951) 09 AHC CK 0027

Allahabad High Court

Case No: Misc. Case No. 109 of 1949

Ram Sarup

APPELLANT

Vs

Chimman Lal and
Others

RESPONDENT

Date of Decision: Sept. 11, 1951

Acts Referred:

- Guardians and Wards Act, 1890 - Section 14, 9

Citation: AIR 1952 All 79 : (1952) 22 AWR 124

Hon'ble Judges: Sapru, J; Mootham, J

Bench: Division Bench

Advocate: Gyanendra Kumar, for the Appellant;

Final Decision: Allowed

Judgement

Sapru, J.

This is a reference by the learned District Judge of Moradabad u/s 14 Guardians and Wards Act (VIII [8] of 1890) for such orders as this Court may be pleased to pass. The facts which have given rise to it may be stated shortly.

2. The dispute in this case is regarding the guardianship of three minor children, two of whom are girls and one a boy. The girls, Bimla Devi and Kapur Devi are, according to the learned Judge, about eleven years and six years, respectively and the boy Ramkumar, is aged 3 1/2 to four years. Their father is one Ram Sarup who ordinarily resides in Chandausi and their mother is Smt. Dhunia. There is no question in this case regarding any property of the minors. The father and the mother of the children have quarrelled and the mother has left her husband's place. She is at present residing at Hathras and the children are admittedly living with her. She appears to have taken them with her. She left her husband's house some months before the father presented an application for his appointment as guardian of his minor children to the Court of the District Judge, Moradabad. The father, Ram Sarup, was the first to file the application on 8-1-1949. The

mother, namely, Smt. Dhunia filed her application for her appointment as guardian of the minor children some months later, that is to say, on 22-4-1949.

3. At the time of presenting the application it was brought to the notice of the learned District Judge of Aligarh that an application had also been filed before the District Judge of Moradabad in regard to the guardianship of these very minors. In these circumstances, the District Judge of Moradabad has made a reference u/s 14 Guardians and Wards Act, the guardianship proceedings remaining stayed at both the places. Section 14 Guardians and Wards Act, lays down :

"If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself."

Sub-section 3 of Section 14 enacts that:

"If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court and it shall be for the High Court to determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had."

The power of this Court to determine in which Court the guardianship proceedings shall be held is, in my opinion, of a very wide nature. Of course, this power has to be exercised in a judicial manner and this Court will no doubt attach, in coming to a conclusion as regards the proper place, weight to the consideration to which pointed reference is made in Section 9 of the Act, namely, the place where the minor ordinarily resides. I must not, however, be understood to say that this is the only or sole consideration which this Court is bound to take in deciding the forum where the proceedings are to take place,

4. Admittedly, in this case the children are very young and they have been living with their mother. They were no doubt, until their mother left their father, living in Chandausi which is in Moradabad district. It is not disputed that after her departure from Chandausi they have been living with her at Hathras. In these circumstances in this particular case an inevitable conclusion to which I am driven is that their ordinary place of residence is at the moment Hathras. When a person leaves his place, where he has been residing as a permanent resident, for good, i. e. with no intention to come back to it and goes to some other place to live there, the former place where he used to live ceases to be his ordinary place of residence. The latter place becomes his ordinary place of residence. The question of residence is largely a question of intention. In the case of minors, no question of intention arises. But the Court will take into consideration their actual place of residence at the time of the application and regard that as their ordinary place of residence.

5. I, therefore, hold that inasmuch as the children are living with their mother, their place of residence at the time the application was presented was Hathras.

6. It strikes me that it will be less inconvenient for the father to visit Aligarh from time to time in connection with the guardianship proceedings than for the mother who, being a woman, according to the social conventions in this country, will have to be escorted each time she goes, in connection with the proceedings initiated by the father, to Moradabad. The balance of convenience is thus on the side of Aligarh. I do not think that the mother is less deeply interested in the children than the father and considering that they are very young it may be that she has a case to put forward for her appointment as their guardian. To fix Moradabad as the place where the guardianship applications should be heard may be to handicap her in prosecuting her application for guardianship. I think I can take this circumstance also into consideration in fixing the place where the applications should be heard.

7. It was urged by the learned counsel for the appellant that one of the children, namely, Bimla Devi was, according to the mother, fifteen years old and had been married by her to a young man called Manohar Lal, a resident of Chandausi. The age of the girl, however, has been given by the learned Judge as eleven years. Even on the assumption that she is fifteen years old, it is extremely improbable that her gauna ceremony has been performed. In fact there is no allegation that she has gone through that ceremony. In these circumstances, it is extremely unlikely that she would be living in her husband's house. Indeed it has not been suggested that she is living in her husband's house at Chandausi. I cannot, therefore, differentiate her case from that of the other children and must assume that she also is living with her mother. The mother's place of residence is Hathras which is in the district of Aligarh. That being so, she must also be deemed to be residing in Hathras. On a balance of the various considerations to which I have invited attention and particularly in view of the fact that the children are residing with their mother at Hathras, I have come to the conclusion that the proper order in this case would be to direct that the proceedings relating to both the guardianship applications should be held at Aligarh.

8. I would, therefore, order accordingly.

Mootham, J.

9. I have some hesitation in this case, but my doubts are not sufficiently strong to induce me to disagree with the order proposed by my brother. I think Mr. G. Kumar is right in contending that in determining in which Court guardianship proceedings should be had, this Court ought to be guided by a consideration of the question of jurisdiction; for I do not think that it was the intention of the Legislature as expressed in Section 14 Guardians and Wards Act, to confer upon the High Court power to vest a subordinate Court with a jurisdiction under that Act it would ordinarily not possess. I have however a difficulty in accepting Mr. Kumar's further contention that the minor children must be held to be ordinarily resident in Chandausi. They are not in fact residing there: they have been taken away by their mother, and on such materials as are before us, it seems to me that they were taken away with the intention that they should stay away. In these circumstances it

appears to me that their ordinary residence in Chandausi thereupon came to an end and that they must be regarded, for the purposes of the Act, as being ordinarily resident within the jurisdiction of the District Court of Moradabad.

10 By the Court.--Miscellaneous case No. 3 of 1949 in the Court of the District Judge of Moradabad is transferred to the Court of the District Judge of Aligarh and will be heard by him along with Miscellaneous case No. 38 of 1949 of the latter Court.