

(2011) 07 AP CK 0001

Andhra Pradesh High Court

Case No: C.R.P. No. 2250 of 2011

Dharmavarapu Venkata Ramana

APPELLANT

Vs

Addanki Rajya Lakshmi and
Others

RESPONDENT

Date of Decision: July 7, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2
- Guardians and Wards Act, 1890 - Section 9, 9(1), 9(3)

Citation: (2011) 5 ALD 456 : (2011) 6 ALT 31

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Y.V. Ravi Prasad, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Petitioner was married to Lalitha, the daughter of the 1st Respondent. They were blessed with a female child, named Gayathri Jyothirmayi. On 23.08.2009 Lalitha died, out of severe burns. On a complaint submitted by the mother of the deceased i.e. the 1st Respondent herein, alleging that the Petitioner murdered Lalitha, Crime No. 204 of 2009 was registered by the P.S. Piduguralla, wherein the Petitioner is shown as accused. The child was taken away by the 1st Respondent, to her residence. She was admitted at a school in Chennai, where the sons of 1st Respondent are employed.

2. The 1st Respondent filed G.W.O.P. No. 30 of 2009 in the Court of Principle District Judge, Ongole, against the Petitioner and Respondents 2 to 5, with a prayer to appoint her as guardian, for the person and properties of the ward - Gayathri Jyothirmayi.

3. The Petitioner filed counter in the O.P. The trial of the O.P. is in progress's Ws.1 and 2 were examined. At that stage, the Petitioner filed I.A. No. 67 of 2011 with a request to the trial Court to decide the question of territorial jurisdiction as a preliminary issue and I.A. No. 68 of 2011 with a prayer to return the O.P., to the District Court, Guntur. The applications were opposed by the 1st Respondent. Through common order dated 15.03.2011, the learned District Judge dismissed the applications. This revision is filed against the order in I.A. No. 67 of 2011.

4. Sri Y.V. Ravi Prasad, learned Counsel for the Petitioner, submits that the child was with his client at Piduguralla, before she was forcibly taken away by the 1st Respondent, and in that view of the matter, she should be treated as an ordinary resident of Piduguralla Village, Guntur District. He contends that Sub-section (1) of Section 9 of the Guardian and Wards Act, 1890 (for short "the Act") mandates that a petition for the custody of a minor child must be filed in the Court, within whose territorial jurisdiction the child resides. He submits that being the natural guardian of the child, the Petitioner is entitled to keep the custody of the child and there was no justification for the 1st Respondent in filing the O.P. in the District Court, Ongole.

5. The revision cannot be maintained, on account of a reason, which of course, may be technical in nature. The Petitioner filed two applications, being I.A. Nos. 67 and 68 of 2011, and both of them were dismissed, through a common order. In case the Petitioner intended to pursue further remedies, he ought to have filed two revisions against the two decretal orders passed in both the I. As. Failure to file a revision against one of them would lead to a situation where the other becomes final and that in turn would operate as res judicata.

6. On merits also, the application of the Petitioner does not warrant any consideration at all. Section 9 of the Act 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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

7. Sub-section (1) mandates that the O.P. must be filed in the Court, within the territorial jurisdiction of which, the child, whose custody is sought, ordinarily resides. The expression "ordinarily resides" was the subject-matter of interpretation in several judgments. In certain cases, it was held to mean the place where the child actually and physically resided. In other cases, the expression was interpreted to mean the place where the child is expected to reside in the ordinary course of things. In case the child is residing at a different place, on account of studies etc., problem may arise in deciding the place of her residence. The ultimate basis appears to be to ascertain the person in whose effective custody the child is. This becomes necessary because the child cannot have any independent place of residence, it can be taken as the place of residence of its own. Once that is done, the said place becomes relevant for the purpose of Section 9(1) of the Act, even if the child is physically residing elsewhere, for the purpose of studies or care or for other such purposes.

8. It is no doubt true that being the father of the child, the Petitioner is expected and entitled to hold and retain the custody of the minor child, particularly when the mother is no more. In the instant case, the death of the mother of the child occurred under mysterious circumstances and as of now, the Petitioner is facing prosecution as accused for the murder of his wife. Enraged by these developments, the 1st Respondent herein, the mother of the deceased has taken the child with her. The Petitioner does not dispute that fact. Therefore, the 1st Respondent is in the effective custody of the child. The fact that the child is residing in Chennai for her studies, does not assume significance in this context. If it were to be otherwise, the proper forum would be the one at Chennai and the request of the Petitioner to transfer the O.P., to the Court of District Judge, Guntur, becomes untenable.

9. The Petitioner has also pleaded two other grounds. One was by making a request to take necessary steps u/s 9(3) of the Act (wrongly mentioned as 9(2)) of the Act. This provision takes into account, the place where the properties of a minor, regarding which relief is claimed, are located. As regards this, the matter must be left to the discretion of the Court concerned. Basically an application does not lie u/s 9(3) and it is only if the Court to examine and satisfy itself as to whether it has territorial jurisdiction to entertain the O.P. If it takes the view that the O.P. must be filed in a different Court, it should simply return, the same, so that it can be presented in a proper forum. The Petitioner does not dispute that some of the items of the properties mentioned in the O.P., are within the territorial jurisdiction of the Court at Ongole.

10. The other facet of his grievance is that the question of territorial jurisdiction be decided, as a preliminary issue. Even this is not tenable for more than one reason. The first is that an objection as to territorial jurisdiction must be raised at the threshold of the proceedings. In the instant case, the case has progressed to a substantial extent. Not only the Petitioner had filed counter and issues were framed,

but also some witnesses were examined. Secondly, the question as to territorial jurisdiction can never constitute the subject-matter of preliminary issue. It is only questions of law that can be decided as preliminary issues, as is evident from Rule (2) of Order XIV CPC A question of fact, which needs recording of evidence, cannot be decided as a preliminary issue.

11. The trial Court has taken correct view of the matter and this Court is not inclined to interfere with the order under revision.

12. The C.R.P. is accordingly dismissed. There shall be no order as to costs.