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Anima Gupta Vs. Tarun Kumar Gupta

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Court : Allahabad

Decided On : Sep-18-2002

Reported in : AIR2003All76

Judge : B.K. Rathi, J.

Acts : Guardians and Wards Act, 1890 - Sections 9

Appeal No. : Civil Revn. No. 405 of 2001

Appellant : Anima Gupta

Respondent : Tarun Kumar Gupta

Advocate for Def. : Usha Kiran, Adv.

Advocate for Pet/Ap. : V.K. Jaiswal, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

B.K. Rathi, J.

1. The opposite party moved an application under Section 25 of Guardians & Wards Act read with Section 6 of the Hindu Minority and Guardianship Act for appointment of guardian and custody of minor Abhineet. The opposite party is the

father and the applicant is the mother of the minor. The applicant contested the application. She also raised a preliminary objection thatminor Abhineet is ordinarily residing in Gauhati (Assam) and, therefore, the District Judge. Ghaziabad has no jurisdiction to entertain and decide the application. The trial Court decided this matter as a preliminary objection and has held that the application can be entertained and decided at Ghaziabad. Aggrieved by it, the present revision has been preferred.

2. I have heard Sri V. K. Jaiswal, learned counsel for the revisionist and Miss. Usha Kiran, learned counsel for the opposite party.

3. The position is not disputed that Section 9 of the Guardians and Wards Act provide that if the application is for appointment of guardian of the person of the minor, it shall be made to the District Judge having jurisdiction in the place where the minor Ordinarily resides.

4. It is contended by the learned counsel for the opposite party that a divorce petition was pending between the parties which was taken up in the Lok Adalat on 11-5-2000. At that time the minor Abhineet was ordinarily living with the opposite party and was present in the Court; that on that day he was taken by the applicant and was sent to Gauhati at the residence of the brother of the applicant; that the age of the minor is only six years. It is further contended that the address of the applicant is B-5, Nehru Apartment, Nehru Nagar, Ghaziabad and she is living there and notice of this case was, also served on the applicant at this address.

5. As against this, the contention of the applicant is that the minor is ordinarily living in Gauhati. The applicant has filed the certificate of the Head Master of Airport Institution, Gauhati. Annexure-3 to the affidavit in which it is mentioned that Abhineet Gupta is minor and is studying in Class-1 from February. 2000 in the Airport Institution (Airport Authority of India, Gauhati-15). It is contended that this certificate shows that the minor is living in Gauhati since February, 2000; that the application for appointment of guardian was moved before the District Judge on 21-8-2002 and that time the minor was living at Gauhati.

6. It may also be mentioned that according to the opposite party, the minor was taken on 11-5-2000 by the applicant and was sent to Gauhati. The application was moved on 21-8-2000. Therefore, accordingto the applicant himself, at the time when the application was moved, the minor was ordinarily residing at Gauhati.

7. Accordingly, in accordance with the provision of Section 9 of the Guardians and Wards Act, the application for custody is not maintainable in Courts at Ghaziabad. Application could be filed in the Courts at Gauhati.

8. Accordingly, the revision is allowed. The impugned order of the trial Court is set aside and it is found that the application under Section 9 of the Guardians and Wards Act is not maintainable in Courts at Ghaziabad and is accordingly dismissed.

9. Considering the circumstances, the parties are directed to bear their own costs.

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