

Devilal Bhagat Vs. Rekha Bhagat

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Court : Jharkhand

Decided On : Dec-18-2007

Reported in : [2008(2)JCR240(Jhr)]

Judge : M.Y. Eqbal, J.

Appellant : Devilal Bhagat

Respondent : Rekha Bhagat

Disposition : Application allowed

Judgement :

M.Y. Eqbal, J.

1. In this writ application under Article 227 of the Constitution of India the petitioner has challenged the order dated 15.7.2005 passed by Principal Judge, Family Court, Bokaro in Guardianship Case No. 5/2001 whereby the application filed by the petitioner for appointment of guardian of the person and property of minors has been dismissed holding that the said petition is not maintainable. 2. The facts of the case lie in a narrow compass: The petitioner, being the grand father of the minor, Priyanka Bhagat and also being the head of the family, tiled an application before the District Judge, Bokaro at Chas for his appointment as guardian of the person and property of his minor grand daughter. The said petition was registered as Guardianship Case No. 5/2001. The District Judge, Bokaro, however,

transferred the case to the court of Principal Judge, Family Court, Bokaro for disposal. Thereafter, the case remained pending before the Principal Judge, Family Court, Bokaro. The petitioner appeared before the Family Court and the case was taken up for hearing. The Principal Judge, Family Court finally dismissed the application holding that the said application for appointment of guardian in respect of person and property of the minor is not maintainable. The operative portion of the order passed by the Family Court reads as under:

It is pertinent to note in re that by virtue of Section 7(g) of the Family Courts Act, 1984 a power/jurisdiction has been conferred upon the Family Court to entertain a suit or proceeding in relation to the guardianship of the person of any minor. The present guardianship case since relates to the appointment of guardian of the person and property of the minor both, the same is not maintainable/entertainable before this court because it lacks the said jurisdiction.

For the reasons stated above this guardianship case, accordingly stands dismissed as not maintainable.

The applicant, however, shall (sic) entitled to see his remedy before an appropriate (sic), if so advised.

3. The petitioner has challenged the said order by filing this application.

4. Without going into the merits of the case of the parties, the moot question that falls for consideration is as to whether the Principal Judge, Family Court was justified in dismissing the application as not maintainable. Originally the application was filed by the petitioner under Section 10 of the Guardian and Wards Act, 1890. Section 9 of the Act provides that an application with respect to guardianship of person and property of the minor shall be made before the District Judge having jurisdiction in the place where the minor ordinarily resides or the District Court having jurisdiction in the place where he has the property.

5. Section 4(4) of the Act defines the District Court and Section 4(5) defines the word court. The said definitions read as under:

(4) ' District Court' has the meaning assigned to that expression in the Code of Civil Procedure, 1882 (14 of 1882) and includes a High Court in the exercise of its ordinary original civil jurisdiction.

(5) 'the Court' means-

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application:-

(i) the Court which , or the Court of the officer who; appointed or declared that guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under Section 4A, the Court of the officer to whom such proceeding has been transferred;

6. The Family Courts Act, 1984 has been enacted for the establishment of Family Court with a view to promote, conciliation and secure speedy settlement of disputes relating to marriage or family affairs and also relating to matters connected therewith. Section 3 confers power to the State Government to establish Family Court after consultation with the High Court and also appoint judges for the said Family Courts. Section 7 of the Act confers jurisdiction upon the Family Court. For better appreciation Section 7 reads as under:

7. Jurisdiction:- (1) Subject to the other provisions of this Act, A Family Court shall-

(a) have and exercise all the jurisdiction exercisable; by any District Court or any subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and

(b) be deemed, for the purpose of exercising such jurisdiction under such law, to be a District Court or, as the case may be such subordinate Civil Court for the (sic) to which the jurisdiction of the Family Court extends.

Explanation :- The suits and proceedings referred to in this sub-section are suit and proceedings of the following nature namely:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) A suit or proceeding in relation to the guardianship of the person or the custody of, or access to any minor.

7. From bare reading of the aforesaid provisions, it is manifestly clear that the suits and proceedings including the suit or proceeding where any question of guardianship of the person of any minor or his custody or access to him arises, whether governed by any personal law or the provisions of the Guardians and Wards Act would be cognizable only by the Family Court if the matter arises within the area over which the jurisdiction is exercisable by the Family Court. The Family Court has no jurisdiction if the question involved relates to appointment of guardian in respect of the property of a minor whether under personal law or any other law for the time being in force. However, in such suits or proceedings where question of appointment of a guardian for both purposes namely person and property of a minor is involved, the Family Court would have no jurisdiction as Clause (g) of the Act does not include proceeding in relation to property of a minor.

8. In the light of the aforesaid provisions, the next question that falls for consideration as to whether Family Court has erred in law in dismissing the

application of the writ petitioner for appointment of Guardian of the person and property of the minor as not maintainable.

9. As noticed above, the petition for appointment of Guardianship was originally filed by the petitioner in the Court of District Judge, Bokaro at Chas. In my considered opinion, the first error committed by the District Judge is to transfer the proceeding to the Family Court although proceeding was for appointment of Guardian of person and property of minor. The District Judge appears to have not applied his mind before transferring the case to the Court of Principal Judge, Family Court, Bokaro. The Family Court has also committed serious error of law in dismissing the case as not maintainable. The only course available to the Family Court was to transfer back the case to the District Judge from where case was transferred to him holding that it has no jurisdiction to hear the suit or proceeding for appointment of Guardian in respect of both person and property of minor. The impugned order passed by the Family Court is, therefore, illegal and wholly without jurisdiction.

10. For the reasons aforesaid, this application is allowed and the impugned order is set aside.

11. The Family Court, Bokaro is directed to send back the file to the Court of District Judge, Bokaro who on receipt of the file shall dispose of the said application on merit after giving notice to the parties.