

Pradeep Vs. Mamta and ors.

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Court : Delhi

Decided On : Mar-16-2004

Reported in : 111(2004)DLT16; 2004(74)DRJ528

Judge : Manmohan Sarin, J.

Acts : Guardian and Wards Act, 1890 - Sections 9 and 9(1)

Appeal No. : W.P. (C). 8186/2003 and CM. 13466/2003

Appellant : Pradeep

Respondent : Mamta and ors.

Advocate for Def. : P.K. Anand, Adv.

Advocate for Pet/Ap. : Ranjit Sharma, Adv

Judgement :

Manmohan Sarin, J.

1. Petitioner had brought the child to Court, pursuant to the directions given on 7th January, 2004. The child has met the respondent-mother. On enquiring from the parties, I find that at present there is no possibility of reconciliation. With the consent of parties, writ petition is taken up for disposal.

2. Petitioner-husband has filed this petition assailing the order dated 18.11.2003 passed by the Guardian Judge in G.No.241/2003. By the said order, the Guardian Judge had directed issuance of production warrants to be executed by the SHO, Pappan Kalan, Uttam Nagar, Delhi with a direction to petitioner-husband to produce the minor child in Court. The learned Guardian Judge was of the opinion that as per Section 9 of the Guardian & Wards Act, 1890, the jurisdiction under Section 9(1) of the Act is of the Court where the minor ordinarily resides.

3. The learned Guardian Judge has proceeded on the basis that the child was living in Delhi with respondent but the petitioner and his brother had forcibly taken away the child during a court hearing.

4. Learned counsel for petitioner has drawn my attention to the petition itself filed by the respondent-wife dated 20th October, 2003. The first para of the said petition is as under :-

'That the petitioner is a permanent resident of Distt. Alwar, Rajasthan as stated above Along with her parents and one daughter namely Archana.'

There are averments with regard to the residence of respondent and minor in Rajasthan in para 4 upon leaving the matrimonial home.

5. Learned counsel for respondent states that the child had been forcibly taken away from the jurisdiction of Delhi Court by the petitioner and his family members while they appeared in a case in Delhi.

6. I am of the view that the learned Guardian Judge could not have simply proceeded accepting the allegation that the child ordinarily resided within the jurisdiction of the Delhi Court without evidence. The petitioner claim that they reside in UP. Learned counsel for respondent submits that the child had been in Delhi and the petitioner-husband himself is residing in Delhi and not in U.P. Learned counsel for respondent states that he be permitted to move an application for necessary amendments in the pleadings to bring out the factual position on record. It would be open for the respondent to move the learned Guardian Judge for amendment of the petition. Learned counsel for petitioner says that he has no

objection to evidence being led on the question of residence of parties and that of minor.

7. The impugned order is set aside with a direction to the Guardian Judge to decide the question of jurisdiction afresh after recording of evidence. The parties be asked to lead evidence on affidavits or otherwise as the Guardian Judge deems proper on the question of jurisdiction. Any application for amendment shall also be disposed of on merits.

8. The petitioner shall also produce the child before the Guardian Judge on 23rd March, 2004, the date fixed so that respondent-mother can have a meeting with the child. Further directions with regard to custody and meeting with the child are in the entire discretion of the learned Guardian Judge.

Copy of the order be given dusty to counsel for parties.

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