

Manmohan Suri and anr. Vs. Sunil Kumar Arora and ors.

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Court : Delhi

Decided On : Nov-02-2004

Reported in : AIR2005Delhi269; 115(2004)DLT508

Judge : R.S. Sodhi, J.

Acts : Code of Civil Procedure (CPC) - Sections 9 - Order 7, Rule 11

Appeal No. : FAO 315/2004

Appellant : Manmohan Suri and anr.

Respondent : Sunil Kumar Arora and ors.

Advocate for Def. : None

Advocate for Pet/Ap. : Krishan Kumar, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. This appeal is directed against the judgment of the Guardian Judge in Guardianship Petition No.191/2003, whereby the learned Judge vide its judgment and order dated 9th August, 2004, has declined to entertain the petition on the ground that he has no territorial jurisdiction to deal with the matter since the minor

lives beyond his jurisdiction, namely, in Ludhiana.

2. The facts of the case, as has been noted, by the Guardian Judge, are as under :

"The relevant facts are that daughter of petitioners named Sumita (since deceased) was married to respondent No.1 on 12.9.1999 at Delhi. After the marriage, respondents No. 2 and 3 always pressurised the daughter of petitioners to shift to Punjab permanently. The respondent No.3 started poisoning the ears of deceased daughter of the petitioners in order to blackmail her to shift to Punjab. The deceased was under mental stress and pressure due to the acts of family of her husband. The deceased daughter suffered from two miscarriages and later on, at the time of third pregnancy, she was brought by respondent No.1 to the house of the petitioners fearing the attitude and conduct of respondent No.2. The entire period of pregnancy was spent by the deceased daughter at the house of the petitioners and also delivery of the child had taken place in Delhi. Various allegations have been leveled against the respondent No.1 to the effect that he had ignored the deceased daughter of the petitioners all the times resulting in severe depressions to her. It is stated that deceased daughter of petitioners died prematurely due to the cruelties caused by the respondents. The deceased daughter under premonition about her death had expressed her feelings not to leave the infant child in the custody of the respondents. The health of deceased daughter Sumita kept on deteriorating due to the behavior of her husband and in laws. Due to depression and nervousness, her condition became worst and she died on 24.3.2002.

3. It is further stated that infant child was given to his "Tai" (paternal aunt) named Smt.Sapna for breast feeding in the presence of entire biradri. Despite the promise to remain in Delhi, said aunty left for Punjab immediately. Thereafter, petitioners went to Ludhiana to meet the child and also to have the custody of the child in May, 2002, July, 2002 and September, 2002, but to no avail. It is stated that despite assurance, the child has not been handed over back to the petitioners and behavior of the respondents have also not been cooperative. Thereafter, in July, 2003 respondents flatly refused to hand over the child to the petitioners who are the lawful guardian. It is stated that natural father of the child has never taken care

of the child and never paid any attention to the child and instead, contemplating to get married again. It is further alleged that the child would not be properly brought up in the custody of the respondents and further, it is stressed that petitioners are the appropriate persons to have the custody of the minor child.

4. The respondents filed the written statement taking the preliminary objections about the jurisdiction of this court to entertain the present petition and the petitioners have no locus standi to maintain the present petition and further that the petition is not maintainable as per law. The respondents have refuted all the allegations leveled by the petitioners in their petition. It is stated that petition is liable to be rejected under Order 7 Rule 11 CPC. It is categorically denied that the behavior of the respondents was in any manner tortuous to the deceased daughter of the petitioners or that they are not able to bring up the child properly.'

3. Counsel for the appellants contend that the meaning given in Section 9 to the words "where the minor ordinarily resides" would in this case mean where the father of the minor is residing. He submits that the father is residing in Delhi and is doing business in Delhi. Consequently, the Guardianship Court in Delhi had jurisdiction. Heard counsel for the appellants and have gone through the judgment under challenge as also the pleadings of the parties. It appears to me that the appellants except for making a bald statement that the father of the child resides in Delhi has not given any specific address of the residence of the father, whereas in the written statement it has been categorically denied that the father of the child resides in Delhi. In this view of the matter, I find no infirmity in the judgment under challenge. FAO 315/2004 is dismissed.