

Anitha Abraham Vs. Jacob Oommen

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Court : Kerala

Decided On : Jul-12-2002

Reported in : 2003(1)KLT417

Judge : A. Lekshmikutty, J.

Acts : [Guardians and Wards Act, 1890](#) - Sections 9; [Family Courts Act, 1984](#) - Sections 7

Appeal No. : C.R.P. No. 1120 of 2002

Appellant : Anitha Abraham

Respondent : Jacob Oommen

Advocate for Def. : A.K. Jose, Adv.

Advocate for Pet/Ap. : Sunil Jacob Jose and; K.M. Abdul Latheef, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Lekshmikutty, J.

1. Against the order in G.O.P. No. 343/2000 on the file of the II Additional District Court, Ernakulam, this Revision Petition is filed by the respondent in the petition.

The respondents as petitioners filed G.O.P. No. 343/2000 to declare them as joint guardian of the person and property of the minor Adithya Aju Abraham, grandson of the petitioners. The petitioner herein and the son of the respondents, Abraham Jacob were husband and wife and their marriage was solemnised at Sharon Marthoma Church, Palarivattom. The child Adithya Aju Abraham was born to them in the wedlock on 7th November, 1998. Late Abraham Jacob was working at Bangalore. He met with an accident and expired on 3rd April, 1999 while he was at Karnataka. The dead body of Abraham Jacob was brought to Kochi and buried at the cemetery of Sharon Marthoma Church, Kochi. The petitioner along with the minor child resided at the residence of the respondents herein from 3rd April, 1999 upto 18th May, 1999 in house No. 35/1494, South Janatha Road, Palarivattom. The minor child is entitled to reside in the above house. The petitioner along with the minor child resided with her brother and brother's wife at Lagos, Nigeria. The brother and sister-in-law returned to India and started to reside at Tripunithura along with the child. The child along with the brother and his wife were residing at Tripunithura from March, 2000. Subsequently the minor was taken from Tripunithura to Kaviyoor, Thiruvalla. The petitioner remarried on 12th July, 2000. As per the respondents, if the child is allowed to reside with the step father, the welfare of the child will be affected. So the petition is filed to appoint them as joint guardian of the person and property of the minor. The child is entitled to get 2/3rd of the property scheduled in the petition amounting to Rs. 4,30,464.

2. The petitioner herein filed objection contending that the petition is not maintainable and the court has no territorial jurisdiction to entertain the petition. The Family Court alone has jurisdiction to entertain the petition. After getting permission of her husband and parent's, she took the child with her and now the child is residing with the mother. The respondents herein are not entitled to appoint a guardian of the minor child.

3. The petitioner herein filed a petition to hear the maintainability of the petition as a preliminary point. The court below has considered the entire facts and circumstances and found that the court has jurisdiction to entertain the petition. Against the said order this Revision Petition is filed by the respondent in the G.O.P.

4. The question to be considered is whether there is any reason to interfere with the order passed by the court below. The marriage of the petitioner and Abraham Jacob was solemnised at Sharon Marthoma Church, Palarivattom and the minor child Adithya Aju Abraham was born to them in their wedlock on 7th November, 1998. There is no dispute with regard to the fact that late Abraham Jacob was working at Bangalore and while he was working at Karnataka, he met with an accident and died on 3rd April, 1999. The dead body was brought to Kochi and the dead body buried at the cemetery of Sharon Church, Kochi. Till 18th May, 1999 the petitioner and the minor stayed in the house of the respondents herein. As per the revision petitioner the District Court has no jurisdiction to entertain the petition and the petition ought to have been filed before the Family Court. It is further contended that the child was not ordinarily residing within the jurisdiction of the said court. As per Section 7(g) of the Family Courts Act, a suit or proceeding in relation to the guardianship of the person or the custody of or access to, any minor is to be filed before the Family Court. According to her, the District Court has no jurisdiction to entertain the petition. This contention of the petitioner cannot be accepted since the petition is filed not only for appointment of a guardian of the person alone but for appointment of the guardian of the minor's property also. The Family Court has no jurisdiction to entertain an application to appoint a person as guardian of the property of the minor. This position is well established in the decision reported in *Susila Naik v. Judge, Family Court, Rourkela* (AIR 1988 Ori. 61) and *Kamal V. M. Allaudin v. Raja Shaikh* (AIR 1990 Bom. 299). So the contention of the petitioner that the Family Court alone has jurisdiction to entertain the petition is only to be discarded and the court below has jurisdiction to entertain the petition for appointment of the person and property of the minor.

5. Another contention raised by the petitioner is that the court below has no territorial jurisdiction to entertain the petition. As per the petitioner, the minor child is not ordinarily residing within the jurisdiction of the lower court. As per Section 9 of the Guardians and Wards Act, the petition is to be filed within the jurisdiction of which the minor ordinarily resides. If the property is involved, the court having jurisdiction over the area where the property situates has the jurisdiction to entertain the petition. Since the minor child is not residing within the territorial jurisdiction of the District Court, the court below has no territorial jurisdiction to

entertain the petition. It is in evidence that late Abraham Jacob, the father of the minor was working at Bangalore and he expired on 3rd April, 1999 while he was at Karnataka. The dead body was brought to Kochi and buried at the Sharon Marthoma Church is not disputed. From 3rd April 1999 to 18th May 1999, the minor along with the petitioner herein was residing in the building at Palarivattom is admitted by the petitioner. The fact that thereafter the minor child along with the petitioner was residing with her brother and sister-in-law at Lagos, Nigeria for about 5 months also is admitted. Thereafter, the petitioner alone returned to Bangalore leaving the child with her brother and sister-in-law. It is admitted by the petitioner that her brother and sister-in-law subsequently returned to India and started to reside at the residence of her sister-in-law at Tripunithura till March, 2000. According to the respondents herein, the ordinary residence of the minor is Tripunithura within the jurisdiction of the District Court at Ernakulam. Thereafter for a short period the child stayed at Kaviyoor. Remarriage of the petitioner was solemnised on 12th July 2000. It is admitted in the objection that she took the child with her after permission of her husband and their parents and the ordinary residence of the minor is at Bangalore. So the petition ought to have been filed at Bangalore. The present petition has been filed by the respondents on 11th February, 2000 within three months from the date of her remarriage. The evidence on record shows that the minor was not residing with his mother and Bangalore is not the place of their residence. The permanent residence of the minor, according to the respondents herein, is at Palarivattom where the respondents are residing. She took the child recently with her.

6. In order to decide the ordinary residence of the minor, the circumstances is to be looked into. It has come out in evidence that the child was not residing for a long time with the mother prior to her remarriage. So if the child was taken to Bangalore just prior to the institution of the petition, that cannot be considered as the ordinary residence of the minor. There is no dispute with regard to the fact that upto March, 2000, the ordinary residence of the minor was at Tripunithura within the jurisdiction of this Court. The permanent residence of the minor is shown as the residence of his father. Residence is the place where a person has a fixed abode or house. The ordinary residence of the minor has to be taken to his or her paternal family. Here the residence of the paternal family is at Palarivattom within

the jurisdiction of the District Court, Ernakulam. For the purpose of jurisdiction, the temporary residence of the minor need not be taken into account. The circumstances would not show that the permanent residence of the minor is at Bangalore. Ordinary residence does not mean places of temporary residence. In such circumstances the court below has rightly found that the court has territorial jurisdiction to entertain the petition. I find no reason to interfere with the order passed by the court below.

The Civil Revision Petition is dismissed.

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