

**Vimla Vs. Ramesh Chand**

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**SooperKanoon Citation :** [sooperkanoon.com/757361](http://sooperkanoon.com/757361)

**Court :** Rajasthan

**Decided On :** Jul-23-1996

**Reported in :** II(1996)DMC512; 1996WLC(Raj)UC43; 1996(2)WLN90

**Judge :** Arun Madan, J.

**Acts :** [Guardians and Wards Act, 1890](#) - Sections 9, 9(2) and 10; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 24

**Appeal No. :** S.B. (Civil) Misc. Transfer Appeal No. 101 of 1996

**Appellant :** Vimla

**Respondent :** Ramesh Chand

**Advocate for Def. :** A.K. Bhandari, Adv.

**Advocate for Pet/Ap. :** Z.A. Naqvi, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Arun Madan, J.**

1. The petitioner No. 1, who is the wife of the non-petitioner has moved this application seeking transfer of the proceedings, pending before the Family Court at Ajmer relating to the custody of the petitioner's minor son 'Tinku' (Vaibhav), inter

alia, contending that the said minor son was born on 24.12.1992 at Jaipur and the petitioner No. 1 has separated from the society of non-petitioner (husband) w.e.f. 20.6.1992. It has been further contended that ever since then the petitioner has been residing alongwith the minor son within the jurisdiction of this Court at Jaipur. In the reply the non-petitioner has not disputed either the factum of marriage with the petitioner at Jaipur on 17.1.1992 nor the birth of the minor son out of the wedlock on 24.12.1992 and that ever since his birth, the said minor is living with his mother i.e. the petitioner.

2. In view of the differences between the parties, an application was filed by the non-petitioner (husband), claiming custody of the minor in Family Court at Ajmer Under Section 10 of the [Guardians and Wards Act, 1890](#). The said application was contested by the petitioner, by contending before the Family Court that at the time of moving the said application, the non-petitioner No. 1 was residing at Jaipur and was in service in New Bank of India, Branch Johari Bazar, Jaipur. In the present petition itself, it has been specifically contended by the petitioner that the non-petitioner is serving in New Bank of India, Jaipur and, therefore, there should be no difficulty to the non-petitioner No. 1, if the case is transferred from the Family Court, Ajmer to Family Court, Jaipur. In the reply on behalf of the non-petitioner, it has been contended that he was beaten by the family members of the petitioner and he is so much afraid that he cannot live in Jaipur inspite of the fact that he is at present working in Jaipur. Hence the factum of residence of the non-petitioner at Jaipur, so as to make himself amenable to the jurisdiction of Family Court at Jaipur, has not been disputed. The only grievance of the respondent is that he is subjected to harassment. In my considered opinion, this is a vague allegation, which is not substantiated by any evidence. If it is so, then nothing prevented or would prevent the non-petitioner from moving to the law enforcing agencies for seeking protection for himself and his family members, at any stage during the pendency of proceedings before the Competent Court.

3. I have heard the learned Counsel for the parties and have also examined the pleadings on the record. In my considered opinion, the petitioners deserve to succeed. I am further of the opinion that the primary consideration for the Court, when an application is moved Under Section 10 of the Guardians & Wards Act, is

to see that in whose custody, the welfare of the minor can be better looked after and also Under Section 9 of the said Act, the Court is competent to take into consideration the question relating to competence of the Court, where the application has been moved. It has to see, as to whether it is having the jurisdiction to deal with the same at a place, where the minor ordinarily resides. If on preliminary enquiry, it is found that the District Court is having the jurisdiction to deal with the matter, where the minor ordinarily resides, it shall be competent to pass appropriate orders and to deal and decide the same in accordance to law. Sub-section 2 of Section 9 provides as under:

'If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.'

4. Under Section 24 of the Code of Civil Procedure, 1908, this is competent to withdraw the aforesaid proceedings, which are pending before the Family Court at Ajmer and transfer it to the Family Court, Jaipur. Keeping in view the facts and circumstances of the case and after hearing the learned Counsel for the parties, I am of the considered opinion that the proceedings pending before the Family Court, Ajmer in Case No. 9/94, titled : Ramesh Chand v. F.L. Panwar and Anr., Under Section 10 of the Act, deserve to be withdrawn and transferred to the Family Court, Jaipur. The proceedings are accordingly transferred from the Family Court, Ajmer to the Family Court, Jaipur. The application is accordingly allowed.

5. The Family Court, Jaipur is directed to expeditiously deal with the matter immediately on receipt of the record from the Family Court, Ajmer. The petitioners are directed to be present before the Family Court, Jaipur on 2.9.96. The record be send back to the Family Court, Ajmer immediately.