

Sm. Kamla vs Bhanu Mal on 22 November, 1955

Equivalent citations: AIR1956ALL328, AIR 1956 ALLAHABAD 328

ORDER

V.D. Bhargava, J.

1. This is a reference under Section 14 of the Guardians and Wards Act. The facts of the case are that there was one Krishna Kumar Who died leaving his widow Srimati Kamla and her four children. Krishna Kumar's father is Bhanumal. After the death of Krishna Kumar it appears that Smt. Kamla with her three children went to Tehri where her father was residing. But as the children had to be educated she shifted to Roorkee and is residing with her maternal uncle, who is a professor in the Roorkee University.

Krishna Kumar had died in a motor accident in 1952 when a roadways bus, in which he was sitting, on account of the rash and negligent driving, collided with some trees. A sum of Rs. 10,000/- was sanctioned by the State Government as compensation and this appears to be the bone of contention between the grandfather and the mother of the children regarding the appointment of the guardian.

Bhanumal made an application before the Civil Judge of Gonda for appointment of the guardian of the minor children, but this application could not be disposed of because the post of Civil Judge was vacant and there was nobody appointed at Gonda. Smt. Kamla filed another application for guardianship before the District Judge Saharanpur.

The two simultaneous applications were pending for appointment of the guardian of the same minors and therefore a reference has been made to this Court both by the District Judge, Saharanpur as also by the Civil Judge Gonda for a direction of this Court as to where the proceedings should proceed.

2. Learned counsel for Bhanumal has very strenuously argued that the proceedings should continue at Gonda and his arguments are firstly that the present residence of the minors was at Gonda and, therefore according to Section 9 of the Guardians and Wards Act it should be the place where the proceedings should continue. Secondly his contention is that the presence of Smt. Kamla is not at all necessary at Gonda except possibly on one day, and the proceedings can go on without any difficulty at Gonda.

Thirdly his contention is that Bhanumal will have to engage counsel both at Gonda as well as at Saharanpur, because some of the witnesses may have to be examined at Gonda, and lastly it was contended, that the application was filed at Gonda, and therefore preference should be given to the court of Gonda.

3. The first question that has to be considered is whether Section 9 of the Guardians and Wards Act in any way restricts the wide powers given to the High Court to decide where the guardianship proceedings should continue. Secondly, if it is so, which was the place where the minors ordinarily resided in this case, and a further point arises, that in case there are other minors, some of them living at one place, while the other at another place, how can effect be given to Section 9, while exercising the discretion under Section 14.

It may be possible for the learned counsel for Bhanumal to rely on the case -- 'Lakshman Moreshet v. Ganga Ram Narayan', AIR 1932 Bom (592 (A), where it was held that the considerations of convenience are relevant only when the minor ordinarily resides in two districts, but in case a minor resides only in one district that court will have jurisdiction. In my view, that may be one of the relevant considerations, but it cannot be the sole deciding question.

The power given under Section 14 is very wide in its nature. While exercising the powers under Section 14, the residence of the minors is not the only or sole consideration which the High Court is bound to take in deciding the forum where the proceedings are to continue, and I respectfully disagree with the observations in AIR 1932 Bom 592 (A). I am supported in my view by Sapru L, in -- 'Ram Sarup v. Chimman Lal', AIR 1952 All 79 (B).

4. The next question that arises is, where were these minors ordinarily residing? It is admitted that three of the children are very young and they are living with their mother at Roorkee. One of them, the eldest, is with Bhanumal at Gonda. During the life time of their father, the minors were living at Gonda, but soon after the death of their father their mother Smt. Kamla left Gonda practically, as it appears, for good.

She had first gone to Tehri and is at present residing at Roorkee for the education of her children. It cannot be said now, when the mother Smt. Kamla has settled at Roorkee, and the three children after the death of their father have never resided at Gonda, that they are "ordinarily residing" at Gonda. The word "reside" has nowhere been defined and the dictionary meaning is "dwelling permanently, or for a considerable time to have one settled or usual abode; to live in or at a particular place."

To my mind, for all practical purposes now Smt. Kamla is dwelling permanently at Roorkee with her minor children and in any event, she has stayed there for a considerable time, and she wants to make that place a settled and usual abode. The Allahabad case (B), cited above was a very similar case to the present one and in that case the young children had been living with their mother who had left the place of her husband from Moradabad District and had gone to Aligarh district, and it was held by Hon'able Sapru, J. that "In this particular case an inevitable conclusion to which I am driven is that their ordinary place of residence is at the moment at Hathras. When a person leaves the place where he has been residing as permanent resident for good i.e., with no intention to come back & goes to some other place to live there, the former place where he used to live, ceases to be his ordinary place of residence and the latter place becomes his ordinary place of residence.

The question of residence is largely a question of intention. In the case of minors no question of intention arises. But the Court will take into consideration their actual place of residence at the time of the application and regard that as their ordinary place of residence."

5. Thus, it is clear that the place where the three minors ordinarily resided will be deemed to be Roorkee.

6. It was contended on behalf of Bhanumal that actually Smt. Kamla had no permanent abode. Notices had been issued by Gonda Court by different addresses and had been returned unserved because she could not be found either at Tehri or at Roorkee Even if there be no permanent abode the children must be deemed to be living where they are actually residing.

Further in any event, they had not been residing for a considerable time at Gonda and they cannot be said to be ordinarily residing at Gonda, simply because some time back they had lived at Gonda. In the case -- Smt. Vimla Bai v. Baburao Shamrao', AIR 1951 Nag 179 (C), it was held, "When a man has no permanent abode he must be deemed to reside where he actually resides. It follows therefore that his children must also be deemed to reside at the place where he happens to reside."

7. Here the mother is actually residing at Roorkee and therefore, her children will also be deemed to be residing at Roorkee.

8. The past abode, for however long a period it may be, cannot be considered to be the place where the minors are residing. The words used are in the present tense i.e., "Where the minor ordinarily resides."

9. 'Mrs. Annie Besant v. Narayaniah', AIR 1914 PC 41 (D), was a case in which the infants had been residing in the district of Chingleput in the Madras Presidency. They were given in custody of Mrs. Annie Besant for the purpose of education and the minors' had been getting their education in England at the University of Oxford. A case was filed in the district Court of Chingleput where according to the plaintiff the minors had permanently resided. Their Lordships of the Privy Council observed, "The district court in which the suit was instituted had no jurisdiction over the infants except such jurisdiction as was conferred by the Guardians and Wards Act 1890. By the ninth Section of that Act the jurisdiction of the court is confined to infants ordinarily residing in the district.

It is in their Lordship's opinion impossible to hold that the infants who had months previously left India with a view to being educated in England and going to University had acquired their ordinary residence in the district of Chingleput."

So, if for months before, the minors had left Gonda with their mother and for having education at Roorkee they cannot conceivably be residing at Gonda.

10. Apart from this fact now if the three minors are residing within the jurisdiction of Saharanpur court while the one is residing within the jurisdiction of Gonda court both the courts will have equal

jurisdiction and the Court has to exercise its discretion on the question of convenience and its jurisdiction cannot be fettered by Section 6.

11. As regards the contention of learned counsel for Bhanumal that Srnt. Kamla's presence will not be necessary at Gonda except possibly on one or two occasions and she can easily have the proceedings at Gonda conducted through a counsel. The argument equally applies to Bhanumal. The presence of Bhanumal will also not be necessary at Saharanpur and he can as well have the case conducted through counsel; and even if some witnesses at Gonda have to be examined they can be examined on commission and Bhanumal should have no difficulty in their examination.

Smt. Kamla being a woman, according to the social custom, will have to be escorted each time she goes in connection with the proceedings initiated at Gonda court and will have, to take all the minor children with her which will be highly inconvenient. On the other hand, it will be less inconvenient for Bhanumal to go to Saharanpur from time to time. In case, the mother alone goes, it will be very difficult for her to leave all the three minor children at Roorkee.

The balance of convenience is thus decidedly in favour of Saharanpur court as was held in the aforesaid cited 'Allahabad case (B)', by Hon'able Sapru, J. that to fix the other court would be a handicap to her. As I have already indicated there would be no difficulty in the engagement of counsel and examination of witnesses, who can easily be examined on commission.

12. Under the circumstances I direct that the proceedings with regard to the appointment of the guardian of the minors Sidharth, Shyam Malti and Mira shall be continued in Saharanpur Court.

The papers of the case pending in the court of Civil Judge, Gonda shall be sent to the court of the District Judge Saharanpur who shall dispose of this case also. I make no order as to costs.