

Citation: PLD 2022 Sindh 171

Judge: Muhammad Saleem Jessar, J

Title: Syed REZA ALI SHAH VS XII MODEL CIVIL APPELLATE COURT, DISTRICT SOUTH, KARACHI and 2 others

Case No: Const. P No. S-849 and S-850/2020

Dated: 3rd March, 2021.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.---By this single judgment, I propose to dispose of abovenoted two constitutional petitions as in both the petitions parties are same, so also factual as well as legal aspects involved are also almost same.

Through these Constitutional Petitions the petitioner has challenged two Orders both dated 06.11.2020 passed by learned XII/Model Civil Appellate Court, District South, Karachi whereby he dismissed G and W Appeals Nos.94/2020 and 95/2020, both filed by the petitioner herein and upheld the Orders both dated 16.09.2020 passed by learned XX-Civil and Judicial Magistrate, Karachi South, whereby he returned G and W Application No.63/2020 filed by the present petitioner under Section 7 of the G and W Act, 1890, so also G and W Application No.64/2020 under Section 25 of the Act, 1890, both filed by present petitioner, while allowing applications filed by respondent No.3 herein under Section 9 of Guardians and Wards Act. It would be advantageous to reproduce hereunder the concluding para of the said orders:

"In view of above, it is clearly evident that the minor is not residing on the titled address as mentioned on the petition, I am of the opinion that the petition filed by the Petitioner is not within jurisdiction of this court and this court is not competent to entertain the petition. Therefore, G and W application/petition is returned. The Petitioner can file fresh application before the competent court."

Precisely, the facts giving rise to the filing of instant Constitutional Petitions, as unfolded in the Guardians and Wards Applications filed by the petitioner, are that on 23.06.2010 the petitioner Syed Raza Ali Shah married with respondent No.3, Ms.Alina Hasanain and out of this wedlock on 21.01.2013 they were blessed with a child namely Master Syed Asad Ali Shah. After marriage, the parties resided together at Karachi. Subsequently, somewhere in the month of May 2018 respondent No.3 left Pakistan for America along with minor for the purpose of continuity of her education at John Hopkins University in Baltimore under some settlement between the parties in the following terms:

- i) That the Respondent No.3 would go to Baltimore Maryland to continue her education at the John Hopkins University.
- ii) That the minor Syed Asad Ali Shah would temporarily travel for intervals of time to Baltimore Maryland and regularly travel home to Pakistan during the period of the Respondent No.3's stay in that city.
- iii) That after the period of two years the Minor Syed Asad Ali Shah would return to Pakistan.
- iv) That the minor Syed Asad Ali would return to Pakistan during the summer vacations and during the winter vacations and the petitioner would stay and care for the minor as he travelled back and forth between countries.

It was further asserted that on the basis of such agreement, the Petitioner continued to pay a sum of US Dollar 15000 per annum i.e. a total amount of US Dollar 30000 to retain the minor's place at the Karachi American School where he was got admitted by the petitioner. It was further averred that during the period from May 2018 to December, 2018, the minor visited Pakistan in December 2018 and then from June to August, 2019. In the month of November, 2019 the petitioner contacted the respondent and disclosed his intention to collect the minor to be brought back to Karachi; however, in December, 2019 the respondent disclosed her intention not to send back the minor to Karachi. On this, the petitioner immediately traveled to USA to resolve the dispute but he was shocked that instead of sending the minor with the Petitioner to Pakistan, the respondent got served a court notice upon the petitioner and prevented him to meet the minor in contravention to the terms of the agreement settled between the parties. It was further asserted that the minor was ordinary residing at Karachi Pakistan and his departure to and stay in USA was only of temporary nature as per clear understanding/agreement between the parties. It was further stated that the respondent is working as a doctor in Baltimore and remains busy from 8 a.m. to 8 p.m. Consequently, leaving the minor unattended with the result that the minor is suffering mentally and emotionally. Consequently, the petitioner prayed in the Guardians and Wards Applications to declare that the petitioner is the natural guardian of the minor and that custody of the minor be handed over to him. It was stated that Respondent No.3 as well as the minor hold dual nationality of Pakistan as well as USA.

Consequent upon service of notice at her Karachi address and that of USA, so also through Pakistan Embassy as well as by publication in the Newspaper, respondent No.3 instead of filing written Objections/ Reply, got filed through her attorney an application under Section 9 of the Guardians and Wards Act, 1890 for dismissal of the guardian and wards applications filed by the petitioner on the basis of pure legal objection of lack of territorial jurisdiction.

Learned trial Court after hearing advocates appearing for the parties, while allowing respondent's application under section 9 of Guardians and Wards Act, returned the applications filed by the petitioner vide two orders dated 16.09.2020 on the ground that it has no territorial jurisdiction to entertain such applications. The petitioner challenged the said orders by filing abovesaid two Appeals bearing Nos.94/2020 and 95/2020 which were also dismissed vide orders dated 06.11.2020, hence these petitions.

I have heard learned counsel for the parties and have gone through the material available on the record.

Learned counsel for the petitioner, contended that the two courts below erred in passing the impugned Orders which are not sustainable in law and on facts. He further submitted that appellate Court erred in holding that while instituting a claim under Sections 7 and 10 of the Guardians and Wards Act, 1890 it is mandatory for the minor to be in the custody of the petitioner. He further submitted that the Appellate Court also erred in placing reliance on Sections 7 and 10 of the Guardians and Wards Act while determining the point regarding territorial jurisdiction as the same can only be determined under Section 5 of the Muslim Family Courts Act, 1964 read with Section 6 of the Muslim Family Courts Rules, 1965. According to him, both the Courts below have not properly appreciated wisdom laid down in the cases of Major Khalid Karim (PLD 2012 SC 66), Anne Zahra reported in 2001 SCMR 2000, and Scherezade Jamali reported in PLD 2018 Sindh 377, and also other decisions of the Superior Courts on this point. He prayed for allowing instant petitions and remanding the case to the trial Court for disposal on merits in accordance with law. In support of his contentions he relied upon the cases reported in PLD 2012 SC 66, 2001 SCMR 2000, PLD 2018 Sindh 377, 2017 YLR 994, 1999 CLC 1623 [Lahore], PLD 2020 Lahore 716 and 1999 CLC 1137.

Conversely, learned counsel for respondent No. 3, Ms. Alina Hasanain, while supporting the impugned orders, contended that the trial Court has rightly returned the G and W

Applications to the petitioner and the Appellate Court has also rightly dismissed the appeals filed by the petitioner. According to her, the minor is residing in USA and the learned trial court has no jurisdiction to entertain the case in respect of guardianship and custody of the minor. She pointed out that the litigation with regard to the minor is pending in the court of USA which fact has been admitted by the petitioner himself. She stressed that the ordinary residence of the minor, as envisaged under Section 9 of the Guardians and Wards Act, is USA and not Pakistan, therefore, Courts in Pakistan have no jurisdiction to entertain and hear G and W applications filed by the petitioner. She lastly prayed to maintain the orders passed by the two Courts below and dismiss the instant petitions. In support of her contentions, she relied upon case law reported in PLD 2012 SC 66, 2011 CLC 146 [Lahore], 1998 MLD 1813 [Karachi], PLD 2018 Sindh 377, 2011 SCMR 1591, 2010 YLR 196 Lahore, 2005 SCMR 1615, 1995 MLD 690 Lahore, 2007 CLC 1885 Lahore, 2013 CLC 131 Lahore, PLD 2012 Supreme Court 66 (sic), 2011 CLC 146 Lahore (sic), 1998 MLD 1813 (sic), PLD 2018 Sindh 377, 2011 SCMR 1591, PLD 1973 SC 24, 2020 MLD 42, 1990 MLD 2258, PLD 1958 SC (Pak), 437, 2020 YLR 196, 2005 SCMR 1315 and 1995 MLD 690 [Lahore].

The sole point which was the bone of contention in the impugned orders passed by two Courts below was, "As to whether the trial Court had got territorial jurisdiction to entertain, hear and decide the Guardian and Wards Applications filed by petitioner Syed Reza Ali Shah or not?"

It appears that the impugned orders passed by the two courts were the result of initiation of an application under Section 9 of the Guardians and Wards Act, 1890. Contents of Section 9, are reproduced hereunder for the sake of convenience:

"9. Court having jurisdiction to entertain application. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."

It is a well settled principle of law that before proceeding on merits with any legal proceedings, either it might be a suit, appeal, petition or application, it is incumbent upon the Court dealing with such legal proceedings, to first see and decide as to whether such application etc. is maintainable or not, more particularly when the other side specifically raises such legal objection regarding maintainability. In the instant case, perusal of the Objections filed by the petitioner to the Application under Section 9 of G and W Act it seems that he had specifically raised such legal objections in the following terms:

"That Respondent's application under Section 9(1) of the Guardians and Wards Act 1890 as, filed is misconceived."

Thereafter, while relying upon Section 5 read with section 26 of the West Pakistan Family Courts Act, 1964 and Rule 6 of the West Pakistan Family Courts Rules. 1965, so also on the judgment delivered by Honourable Supreme Court in the case of Major Mohammad Khalid Karim (PLD 2012 SC 66), he submitted as under:

"In the light of the judgment Honourable Supreme Court, it is misconceived on the part of the Respondent to assume that jurisdiction of this Honourable Court is to be determined under section 9 of the Guardians and Wards Act, 1890..... That in the facts and circumstances, it is submitted that this Application is clearly misconceived and is liable to be dismissed."

That despite the fact that the petitioner had specifically raised such legal objection regarding maintainability of the application under Section 9 of the G and W Act, the trial Court entertained, heard and decided the said application with the result, the Applications filed by the petitioner for guardianship and custody of the minor were dismissed. It seems that the trial

Court has attempted to deal with such legal objections in a cursory manner by making following observations:

"As far as contentions of the Applicant counsel regarding the relevant section of the instant application is concern, it is settled position that the title and section of the application is irrelevant and contents of the application are required to be given consideration."

There is no cavil to the legal proposition that merely mistakenly mentioning wrong provision of law in the application etc. is to be ignored and the contents of such application are to be taken into consideration: however, while making aforesaid observations, learned trial Court seriously erred in considering the fact that even in the contents of the application under Section 9 of the Guardians and Wards Act, 1890, respondent No.3 has pressed the grounds stipulated in Section 9 of the Act, 1890 and not that enumerated in Section 5 read with section 26 of the West Pakistan Family Courts Act, 1964 and Rule 6 of the West Pakistan Family Courts Rules, 1965 which have been held by Honourable Supreme Court to be the proper legal provisions for determining the territorial jurisdiction in the matters regarding guardianship and custody of minors. This fact is supported by following assertions made by respondent No.3 in her application under Section 9 of the Guardians and Wards Act:

"7. It is important to note that in the light of settled law, that the Minor's ordinary place of residence at the time of presenting the application must necessarily and in all circumstances determine jurisdiction under Section 9(1) of the Guardians and Wards Act, 1890....."

"8. It is settled now that Pakistani Courts shall exercise their jurisdiction only with regard to a Minor who is ordinarily residing within the Court's jurisdiction .."

From the bare perusal of aforesaid paras of the application under Section 9 of the Act, 1890, it is manifestly clear that the respondent has stressed upon the ground that the minor is not ordinarily residing at the place which falls within the jurisdiction of the trial Court, whereas the grounds enumerated under the provisions of West Pakistan Family Courts Act, 1964 and West Pakistan Family Courts Rules, 1965 are of different nature.

Needless to emphasize that it is now well settled that the territorial jurisdiction in the matters regarding guardianship and custody of minors is to be determined under the provisions of West Pakistan Family Courts Act, 1964 and that of West Pakistan Family Courts Rules, 1965. In this connection, reference may be made to the case of *Anne Zahra v. Tahir Ali Khilji and 2 others* reported in 2001 SCMR 2000, wherein while dealing with the point in issue it was held as under:

"4. The question for determination which arose in this case was as to which Family Court had the territorial jurisdiction to entertain application under section 25 of the Guardians and Wards Act and whether such a question should be determined in the light of the provisions of the Guardians and Wards Act or the West Pakistan Family Courts Act, 1964 and the rules framed thereunder therefore the question of territorial jurisdiction is to be decided under the said Act and the rules framed thereunder and the Guardians and Wards Act for that matter has no relevancy. Rule 6 of the West Pakistan Family Courts Rules, 1965, framed under the West Pakistan Family Courts Act, 1964, provides that the Court which shall have jurisdiction to try a suit will be that within the local limits of which the cause of action wholly or in part has arisen or where the parties reside or last resided together, therefore, it was under the provisions of the said rule that the question of territorial jurisdiction of the Family Court was to be decided under the said Act and not under the provisions of the Guardians and Wards Act. The Guardian Judge as also the learned Additional District Judge, however, decided the question of territorial jurisdiction in this case by applying the provisions of the Guardians and

Wards Act and not the West Pakistan Family Courts Act, 1964 and the rules framed thereunder which as, held by the High Court in the impugned judgment, was not correctly decided."

In the case of Major Mohammad Khalid (*supra*) it was, *inter alia*, held:

"(b) For the purposes of determining the 'territorial jurisdiction' of the Family Court, it is Act 1964, and the rules framed thereunder which shall be taken into account and not the provision of the Guardians and Wards Act 1890, even as per force of section 25 of the Act 1964."

Even the trial Court as well as Appellate Court themselves, in the impugned orders, while quoting the relevant portions from the aforesaid judgments, have categorically observed that the territorial jurisdiction in the matters regarding guardianship and custody of minors is to be determined under the provisions of West Pakistan Family Courts Act, 1964 and that of West Pakistan Family Courts Rules, 1965 and not under the provisions of Guardians and Wards Act, 1890. For the sake of convenience, relevant portions from the impugned orders are reproduced hereunder. The trial Court in the last page of its order observed as under:

"It is clear that in cases relating to custody of minors, Family Courts Act has overriding effect over the Guardians and Wards Act, therefore, the question of territorial jurisdiction is to be decided under the said act and the rules framed thereunder and the Guardians and Wards Act for that matter has no relevancy"

Similarly, the Appellate Court in its order observed as under:

"14. In the light of above discussed provisions of law and dictum laid by august Supreme Court, this court is of considered view that dispute related to the territorial jurisdiction in respect of custody or guardianship matters shall be governed and regulated by West Pakistan Family Courts Act, 1964 and rules framed thereunder and not under the Guardians and Wards Act, 1890."

Despite having made aforesaid specific observations, the two Court below vide impugned orders proceeded to decide the issue regarding territorial jurisdiction on the basis of the provisions of Guardians and Wards Act, 1890. In this connection, reference may be made to the following observations made by the Appellate Court:

"9. Bare perusal of section 9(1), of Guardians and Wards Act, 1890, it appears the jurisdiction in respect of guardianship of the person of the minor is "ordinary" place of residence of minor .."

In view of above, it is crystal clear that two Courts below miserably failed to first decide preliminary legal objection with regard to maintainability of the applications filed by respondent No.3, Ms. Alina Hasanain under Section 9 of the Guardians and Wards Act, 1890.

Even otherwise, it seems that the point of 'ordinary residence of the minor' which has been made the basis for deciding territorial jurisdiction in Section 9 of the Guardians and Wards Act, 1890 has not been decided in accordance with law and the principle laid down by the Superior Courts. The trial Court while dealing with such point observed as under:

"During period since August 2019 till present minor was in USA and such length of time is good enough to assume that minor is ordinarily residing in the USA and not in Karachi."

Likewise, the Appellate Court in its order while dealing with aforesaid point of 'ordinary residence of minor' observed in para 15 of the Order as under:

"It is significant to note here as narrated that the minor resided in the USA i.e. 389 days from August 2018 and during this period the appellant spent 198 days who resided with the minor in USA and only 92 days minor resided in Pakistan."

It appears that while deciding the said point, the two courts below have been impressed by the fact that during the period from May, 2018 till filing of the Guardians and Wards Applications by the petitioner, the minor has remained in USA for the longer period than the period he remained in Karachi. It is not understandable as to why only period from May, 2018 onwards has been considered for deciding the issue regarding 'ordinary residence of minor' and why the period before May, 2018 has not been taken into consideration. The minor was born on 21st January, 2013 and admittedly prior to respondent No.3's departure along with the minor to USA in May, 2018 for the purpose of completing her education at the John Hopkins University in Baltimore, the minor mostly remained in Pakistan/Karachi. In the circumstances, as to why Karachi should not been said to be the place of 'ordinary residence of minor' as he had spent much more period in Karachi Pakistan than in Baltimore USA.

It is also significant to point out here that the petitioner in his Guardian and Wards Applications, Appeals as well as in para 9 of the instant petitions has stated on oath that respondent No.3 had proceeded to Baltimore with intention and consequent upon mutual understanding between the parties to continue her education at the John Hopkins University Baltimore in the following terms:

- i) That the Respondent No.3 would go to Baltimore Baryland to continue her education at the John Hopkins University.
- ii) That the minor Syed Asad Ali Shah would temporarily travel for intervals of time to Baltimore Maryland and regularly travel home to Pakistan during the period of the Respondent No.3's stay in that city.
- iii) That after the period of two years the Minor Syed Asad Ali Shah would return to Pakistan.
- iv) That the minor Syed Asad Ali would return to Pakistan during the summer vacations and during the winter vacations and the petitioner would stay and care for the minor as he travelled back and forth between countries.

I have not been able to lay my hands on any Written Objections/ Reply having been filed by or on behalf of respondent No.3 either in the proceedings before the trial Court or the Appellate Court or even in the instant petitions wherein she would have specifically denied such assertions made by the petitioner. In the circumstances, when there is no specific denial to such assertions / allegations, this Court has been left with no other option except to hold that such assertions made by the petitioner have been admitted by respondent No.3.

Obviously, from the bare perusal of the assertions made by the petitioner on oath, it is crystal clear that the stay of respondent, so also of the minor in USA was only of temporary nature, therefore, in my view, the Courts below have erred in holding that 'ordinary residence of minor' was Baltimore/USA and not Karachi/Pakistan. In the case of Faraz Alamgir v. Additional District and Sessions Judge VIII and 2 others reported in 2017 YLR 994 this Court, while dealing with similar situation, held as under:

"Furthermore, in section 9(1) of Guardians and Wards Act, 1890, the phrase used is not where the minor "resides", but where he "ordinarily resides". Secondly, the word "ordinarily" has been intentionally used to bring in a consideration other than that of mere factual residence. Thirdly, the word "ordinarily", means more than mere temporary residences and if this word is omitted, then mere temporary residences will also become residences within the meaning of the clause under construction which, it

is obvious, cannot be the intention of the Legislature on the subject. Fourthly, if it is assumed for the purposes of determining jurisdiction under section 9(1), the minor's actual place of residence where he, in fact, is at the time of presenting the application will be considered then it will seriously affect those situations where a minor is removed from place to place in order to defeat the process of law and the jurisdiction of Courts. In the present case it appears from the record that learned courts below overlooked these facts that respondent No.3 is still in the wedlock of the petitioner and both the respondent No.3 and minor are Pakistani nationals holding CNIC and NADRA registration respectively."

As observed above, in view of the fact that no Written Objections/ Reply have been filed by or on behalf of respondent No.3 either in the proceedings before the trial Court or the Appellate Court or even in the instant petitions wherein she would have specifically denied the assertions made by the petitioner that respondent No.3

as well as the minor had left Pakistan only on temporary basis with clear understanding that minor will definitely return to Pakistan, such assertions are deemed to have been admitted by respondent No.3. However, even if, for the sake of arguments, it is presumed that respondent No.3 has denied such assertions, even then in order to determine as to which of the parties have stated true facts, it was incumbent upon the trial Court to have first recorded evidence of the parties and then decided the issue regarding territorial jurisdiction of the Court which exercise admittedly has not been undertaken by the trial Court, therefore, the findings of the two Courts below on this point are not in consonance with the guidance provided by the Superior Courts.

In this connection, reference may be made to the case of *Scherazade Jamali v. Hisham Gillani* and others reported in PLD 2018 Sindh 377, wherein this Court, while dealing with said point, held as under:

"The question of jurisdiction even if made dependent on ordinary residence of ward, it may not be a pure question of law that can be assailed at any forum or at any time. For that it has to be specifically pleaded so that the facts in this regard be brought to the notice of the Court. It is, thus, not a simple question of law rather a mixed question of law and facts which requires determination through evidence."

In another case reported as *Malik Gul Raiz Awan v. Mst. Asma Gul Raiz* and others reported in 2009 MLD 1274 [Lahore], it was held as under:

"The question as to what place, the minors ordinarily reside, is a question of fact to be decided on the basis of evidence placed on record."

Reference may also be made to the case of *Khalid Mahmood v. Mst. Ruqia* and another reported in 1999 CLC 1137 [Karachi] wherein this Court had held as under:

"The question where the minor ordinarily resides is a question of fact and could not be decided in a manner as done by the learned trial Court. It should have afforded opportunities to both the parties to adduce evidence on the point of ordinary residence of the minor and only thereafter should have decided the question of jurisdiction. From the order passed by the learned trial Court it is clear that it has proceeded in a slipshod manner and in great haste which has resulted in defeating the ends of justice."

Adverting to Rule 6 of the West Pakistan Family Courts Rules, 1965, which has been declared proper legal provision for determining the territorial jurisdiction in the matters regarding guardianship and custody of minors, it appears that the said Rule provided following two grounds for determination of territorial jurisdiction:

"6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which

(a) the cause of action wholly or in part has arisen, or (b) where the parties reside or last resided together:...

The two courts below have heavily stressed upon clause (a) of Rule 6 of the Rules, 1965, and have observed that the cause of action had accrued to the petitioner in USA when he proceeded there for taking back the minor to Pakistan; however, on reaching he was prevented to meet the minor and was served with notice of USA Court. However, from the wordings of abovesaid rule, it is clear that it provided two grounds for determining the territorial jurisdiction and by conjoining the two grounds mentioned in clauses (a) and (b) by word "or", it has been made clear that either of the two grounds could be pressed into service. The second ground mentioned in clause (b) of Rule 6 says, "where the parties reside or last resided together". The petitioner has stated in specific terms in para 16 of the two Guardian and Wards Applications, so also in both the appeals filed by him as well as in the instant petitions as under:

"That additionally under Serial No. 6 of Part I of the Schedule to the West Pakistan Family Courts Act, 1964 read with Section 5 of the West Pakistan Family Courts Act, 1964 jurisdiction over the Minor will vest where the parties resided together which is Karachi Pakistan and hence within the Jurisdiction of this Honourable Court."

As stated above, no Written Objections/Reply have been filed by or on behalf of respondent No.3 at any stage of the proceedings before the trial Court, nor the same have been filed in the two appeals filed by the petitioner before the Appellate Court and even no denial has been made to such facts even in the instant petitions, therefore the averments made by the petitioner in all these proceedings are deemed to have been admitted by respondent No.3. Even otherwise, as stated above, the stay of the petitioner with the respondent and the minor at USA was purely of tempo-rary nature. Such 'stay' could not be termed as 'residing together'.

It is also significant to point out here that in the case Scherazade Jamali (supra) while discussing the provisions of Rule 6 of the West Pakistan Family Courts Rules, 1965 it was also held, "In subject clause (b) the word "parties" include "party". A limited meaning to the word "parties" cannot be given, as the later part of this sub-clause serves that purpose in a case where they (both) last resided together. So in case, if any of the party reside within the local limits of a Court or together resided has the jurisdiction."

It has also been vehemently stressed on behalf of the respondent that the respondent as well as the minor hold nationality of USA, therefore, their ordinary residence is Baltimore USA and not Karachi Pakistan. In this connection, suffice it to observe that the respondent and the minor do not hold sole nationality of USA, but they both hold dual nationality of Pakistan and USA. It may be observed that by virtue of Section 5 of the Citizenship Act, 1951, all children, wherever born of a Pakistani father, are deemed to be citizens of Pakistan by descent. In this connection reference may be made to the case of Sumayyah Moses v. Station House Officer, Faisalabad and 3 others reported in PLD 2020 Lahore 716 wherein it was held as under:

"41. The learned counsel for the Petitioner contends that since Abdul Hannan and Arshman Rizwan are nationals of South Africa the Guardian Court in Pakistan had no jurisdiction to appoint their guardian and that Guardianship Certificate dated 17.12.2019 issued in favour of Respondent No.3 is abinitio void. This contention deserves a short shrift. Admittedly, Respondent No.3 is the father of the minors. According to Section 5 of the Citizenship Act, 1951, all children, wherever born of a Pakistani father, are deemed to be citizens of Pakistan by descent. This question was considered by this Court in Muhammad Younas v. Shahzad Qamar and 3 others (PLD 1981 Lah. 280) and it was

ruled that although respondents Nos.1 and 2 in that case were born in U.K. they were citizens of Pakistan by descent in terms of Section 5, *ibid*, and as such the Family Court at Sialkot had jurisdiction to decide the matter. In *Rochomal Daryanom v. The Province of West Pakistan* (PLD 1960 (W.P.) Kar. 150), it was held that the nationality of the minor is determined by that of his father and onus to prove is on the person alleging to the contrary. Similarly, in *Abu Saeed A. Islahi v. Mrs. Talat Mir and 2 others* (1994 MLD 1370) it was held that in law the minors are deemed to hold the citizenship of their father. The question of their renunciation of citizenship cannot arise till they attain the age of majority."

The upshot of the above is that I dispose of present constitutional petitions in the following manner:--

- i) Orders dated 16.09.2020 passed by learned XX-Civil and Judicial Magistrate, Karachi South in G and W Applications No.63/2020 and No.64/2020 as well as Orders dated 06.11.2020 passed by learned XII/Model Civil Appellate Court, District South, Karachi in G and W Appeals Nos.94/2020 and 95/2020, impugned herein, are hereby set aside and matter is remanded to the Court of learned XX-Civil Judge and Judicial Magistrate, Karachi, South.
- ii) The learned XX-Civil Judge and Judicial Magistrate, Karachi, South. The trial Court is directed to rehear the case and decide the question of territorial jurisdiction afresh, *inter alia*, in the light of Family Courts Act, 1964 and the Rules framed thereunder, and after giving opportunities to the parties to prove their respective contentions on the said point by adducing evidence.

Accordingly, these constitutional petition are disposed of along with all pending Misc. Applications. It may be observed that as guardianship and custody of a minor is involved and already a considerable time has been consumed, the trial Court is expected to dispose of the Guardians and Wards Applications filed by the petitioner within shortest possible time under intimation to this Court through MIT-II. Learned MIT-II to ensure compliance.

Case remanded.