

IN THE HIGH COURT OF JHARKHAND AT RANCHI**F.A. No. 109 of 2024**

Amit Kumar Sinha, aged about 40 years, s/o Shri Keshar Prasad, R/o Good and the Great Academy, Siksha Nagar, Bajar Samiti, Bari Pahari, Bihar Sharif, P.O.-Sohsarai, P.S.-Laheri, District-Nalanda (Bihar).

... .. Appellant

Versus

Indu Bala Devi, aged about 55 years, w/o Sri Sudhir Kumar, R/o Flat No.501, 1 Block, Hariom Tower Residency, Circular Road, P.O. & P.S. Lalpur, District-Ranchi.

... .. Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Rishi Pallava, Advocate
For the Respondent : Mr. R.S. Mazumdar, Sr. Advocate
Mrs. Neeharika Mazumdar, Advocate
Mr. Rahul Pandey, Advocate

CAV/Reserved on 01.05.2025

Pronounced on 08/05/2025

Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19(1) of the Family Court Act, 1984 is directed against the order/judgment dated 17.01.2024 passed by the learned Additional Principal Judge, Additional Family Court-I, Ranchi in Original Suit No. 308 of 2022, whereby and whereunder, the issue of jurisdiction raised by way of preliminary objection by the appellant has been rejected holding the jurisdiction of the case to be of the Ranchi Family Court.
2. The brief facts of the case as per the pleading made in the instant appeal needs to be referred herein as under:

The respondent has filed Original (Guardian) Suit No. 308 of 2022 against the appellant under Section 7 and 25 of the Guardian and Wards Act, 1890 with a prayer for getting the custody of her grandchildren, namely, Shaanvi and Anmay.

The said original suit was filed by the respondent on the ground that she is the maternal grandmother (*Naani*) of both the children who

were born out of the wedlock of the present appellant and her deceased daughter (wife of the appellant), who died on 17.05.2021 due to COVID-19. Before the death of the daughter of the respondent, deceased daughter of the respondent and her grandchildren were residing in Ranchi and on 08.11.2021, the present appellant had taken both the children and maid from their house for consulting them to a doctor and thereafter, after dropping the maid in Bariatu, has taken both the children with him to Bihar Sharif, Nalanda.

The present appellant appeared in the aforesaid original suit after getting notice and filed his written statement on 19.05.2023 raising the issue of jurisdiction in entertaining the present suit by the learned Family Judge, Ranchi as also raised the issue of maintainability of the suit against him stating that the appellant being the father of the children, he is the natural guardian of the children. The appellant is a native of Bihar Sharif, Nalanda and children are living with the appellant at his native place, i.e., Bihar Sharif, Nalanda with his family.

On 19.05.2023, the appellant filed a separate preliminary objection on the jurisdiction and maintainability of the original suit No. 308 of 2022 and during the course of argument, the appellant filed some documents relating to his children, i.e., Admission Form, Aadhar Card and Aadhar Enrolment Form. Thereafter, the respondent filed rejoinder on 26.06.2023 stating therein that since the appellant and children along with the deceased mother were residing at Ranchi before 08.11.2021, as such, the learned Family Court, Ranchi is having the jurisdiction to entertain the original suit.

The learned Family Court, Ranchi, in course thereof, has dismissed the preliminary objection dated 19.05.2023 on 17.01.2024 filed by the appellant, against which the present appeal has been preferred.

3. It is evident from the factual aspect as referred hereinabove which led to filing of the present appeal that the respondent has filed Original (Guardian) Suit No. 308 of 2022 against the appellant with a prayer for getting the custody of her grandchildren, namely, Shaanvi and Anmay on the ground that she is the maternal grandmother (*Naani*) of both the

children who were born in Ranchi. In the year 2021, the daughter of the respondent had died due to COVID-19 pandemic and thereafter, the appellant took away the children along with him to his native place, i.e., Bihar Sharif, Nalanda.

4. Thereafter, the present appellant appeared in the aforesaid original suit and filed his written statement raising the issue of jurisdiction in entertaining the present suit by the Family Judge, Ranchi as also raised the issue of maintainability of the suit against him stating that the appellant being the father of the children, is the natural guardian of the children.

On 19.05.2023, the appellant filed a separate preliminary objection on the jurisdiction and maintainability of the original suit No. 308 of 2022 appending therein documents relating to his children, i.e., Admission Form, Aadhar Card and Aadhar Enrolment Form. Thereafter, the respondent filed rejoinder on 26.06.2023 stating therein that since the appellant and children along with the deceased mother were residing at Ranchi before 08.11.2021, as such, the learned Family Court, Ranchi is having the jurisdiction to entertain the original suit.

The learned Family Court, Ranchi, after hearing the parties, has dismissed the preliminary objection dated 19.05.2023 on 17.01.2024 filed by the appellant, which led the appellant to prefer the present appeal.

Argument on behalf of the learned counsel for the Appellant:

5. Mr. Rishi Pallava, learned counsel for the appellant has taken the following grounds in assailing the impugned judgment:
 - (i) The Ranchi Family Judge is having no jurisdiction to adjudicate the issue on the ground that the children are living with their father (the appellant herein) in Bihar Sharif, Nalanda and as such, on the basis of the stipulation made under Section 9(1) of the Guardian and Wards Act, 1890, the jurisdiction to adjudicate the issue lies with the Family Court at Bihar Sharif, Nalanda.
 - (ii) Since the children are living in Bihar Sharif, Nalanda along with the appellant who is the natural guardian as per the stipulation made under Section 6 of the Hindu Minority and Guardianship Act, 1956,

hence, the Court at Bihar Sharif in the district of Nalanda is having the jurisdiction to adjudicate the issue.

6. Learned counsel for the appellant, in support of his argument, has relied upon the following judgment:
 - (i) *Ruchi Majoo vs. Sanjeev Majoo, (2011) 6 SCC 479;*
 - (ii) *Rakhi Kumari @ Rakhi Kumari Mishra vs. Subhash Kumar Mishra, 1027 SCC OnLine 178;*
 - (iii) *Divya J. Nair vs. S.K. Sreekanth, 2018 SCC OnLine Ker 3375.*
7. Learned counsel for the appellant, based upon the aforesaid grounds, has submitted that it is therefore a fit case to interfere with the impugned order/judgment.

Argument on behalf of the learned counsel for the Respondent:

8. Mr. R.S. Mazumdar, learned senior counsel for the respondent, while on the other hand has submitted that the children were living at Ranchi along with their deceased mother in the maternal house but after death of the mother in the second phase of COVID-19 pandemic, the appellant took both the children with him to Bihar Sharif, Nalanda and by virtue of that the question of jurisdiction has been raised to maintain the petition in the Family Court at Bihar Sharif, Nalanda, which is not acceptable, reason being that the father took away both the children from the maternal grandmother's house at Ranchi to Bihar Sharif, Nalanda and hence, in view of the provision of Section 9(1) of the Guardian and Wards Act, 1890, both the children will be said to be residing at Ranchi and hence, the application for custody of the children is well maintainable within the jurisdiction of learned Family Court at Ranchi.
9. Learned senior counsel, in support of his argument, has relied upon the following judgment:
 - (i) *Ruchi Majoo vs. Sanjeev Majoo, (2011) 6 SCC 479.*
10. Learned counsel for the respondent, based upon the aforesaid grounds, has submitted that the instant appeal therefore is fit to be dismissed.

Analysis:

11. We have heard the learned counsel for the parties as also the finding recorded by the learned Family Judge in the impugned judgment as also the record of the learned Family Court.
12. The issue which requires consideration is that “as to whether the case which has been filed by the maternal grandmother for custody of the two children is maintainable in the Family Court at Ranchi or not?”
13. This Court, before consideration of the aforesaid issue, needs to refer herein the provision as contained under Section 9(1) of the Guardians and Wards Act, 1890.
14. The consideration has been given by the Hon’ble Apex Court so far as the issue of jurisdiction as per the provision of Section 9(1) of the Act, 1890 is concerned in the case of *Ruchi Majoo vs. Sanjeev Majoo* (supra) that any challenge to the jurisdiction of the court will have to be seen in the context of the averments made in the pleadings of the parties and the requirement of Section 9 of the Guardians and Wards Act, 1890.
15. The fact of the said case as would be evident from the reference made at paragraph-9 thereof that the appellant mother had in her petition filed under the Guardians and Wards Act, 1890 invoked the jurisdiction of the court at Delhi, on the assertion that the minor was, on the date of the presentation of the petition for custody was ordinarily residing at New Delhi.

The respondent had raised the issue of jurisdiction by pleading that the appellant along with the respondent and their minor son had stayed with the parents of the appellant at Delhi till 05.07.2008. Thereafter, they were supposed to visit Udaipur but since the appellant insisted that she would stay at Delhi and assured to send the minor son after sometime to Udaipur, the respondent left for Udaipur where he received a legal notice on behalf of the appellant making false and imaginary allegations.

The ground, therefore, was taken that neither the appellant nor Kush, the minor son could be ordinarily resident of Delhi so as to confer jurisdiction upon the Delhi Court.

16. The Hon'ble Apex Court has taken into consideration the provision as contained under Section 9(1) of the Act, 1890 which has been considered at paragraph-24 that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the "ordinary residence" of the minor. The expression used is "where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy.
17. The Hon'ble Apex Court has considered at paragraph-26 the expression "ordinarily resident" appearing in Section 9(1). The word "ordinary" has been defined by *Black's Law Dictionary* as follows:

"Ordinary (adj.).—Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

The word "reside" has been explained similarly as under:

"Reside.—Live, dwell, abide, sojourn, stay, remain, lodge. (Western-Knapp Engg. Co. v. Gilbank [129 F 2d 135 (CCA 9th Cir 1942)] , F 2d at p. 136.) To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have one's residence or domicile; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right. (Bowden v. Jensen [359 SW 2d 343 (Mo Banc 1962)] , SW 2d at p. 349.)"

18. In *Webster's Dictionary* also the word "reside" finds a similar meaning, which may be gainfully extracted:

"1. To dwell for a considerable time; to make one's home; live. 2. To exist as an attribute or quality with in. 3. To be vested: with in."

19. For ready reference, paragraphs 24 to 31 of the said judgment are being referred as under:

"24. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the "ordinary residence" of the minor. The expression used is "where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question

of law, capable of being answered without an enquiry into the factual aspects of the controversy.

25. *The factual aspects relevant to the question of jurisdiction are not admitted in the instant case. There are serious disputes on those aspects to which we shall presently refer.*

26. *We may before doing so examine the true purpose of the expression "ordinarily resident" appearing in Section 9(1). This expression has been used in different contexts and statutes and has often come up for interpretation. Since liberal interpretation is the first and the foremost rule of interpretation it would be useful to understand the literal meaning of the two words that comprise the expression. The word "ordinary" has been defined by Black's Law Dictionary as follows:*

"Ordinary (adj.).—Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterised by peculiar or unusual circumstances; belonging to, exercised by, or characteristic of, the normal or average individual."

The word "reside" has been explained similarly as under:

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27. *In Webster's Dictionary also the word "reside" finds a similar meaning, which may be gainfully extracted:*

"1. To dwell for a considerable time; to make one's home; live. 2. To exist as an attribute or quality with in. 3. To be vested: with in."

28. *In Annie Besant v. G. Narayaniah [(1913-14) 41 IA 314 : AIR 1914 PC 41] 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 were getting their education in England at the University of Oxford. A case was, however, filed in the District Court of Chingleput for the custody where according to the plaintiff the minors had permanently resided. Repeating the plea that the Chingleput Court was competent to entertain the application Their Lordships of the Privy Council observed: (IA p. 322)*

"... 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 9th section of that Act the jurisdiction of the court is confined to infants ordinarily resident in the district. It is in Their Lordships' opinion impossible to hold that infants who had months previously left India with a view to being educated in England and going to the University of Oxford were ordinarily resident in the district of Chingleput."

29. *In Jagir Kaur v. Jaswant Singh [AIR 1963 SC 1521 : (1963) 2 Cri LJ 413] this Court was dealing with a case under Section 488 CrPC and the question of jurisdiction of the court to entertain a petition for maintenance.*

The Court noticed a near unanimity of opinion as to what is meant by the use of the word “resides” appearing in the provision and held that “resides” implied something more than a flying visit to, or casual stay at a particular place. The legal position was summed up in the following words: (AIR p. 1524, para 8)

“8. ... Having regard to the object sought to be achieved, the meaning implicit in the words used, and the construction placed by decided cases thereon, we would define the word ‘resides’ thus: a person resides in a place if he through choice makes it his abode permanently or even temporarily; whether a person has chosen to make a particular place his abode depends upon the facts of each case.”

30. *In Kuldip Nayar v. Union of India [(2006) 7 SCC 1] the expression “ordinary residence” as used in the Representation of the People Act, 1950 fell for interpretation. This Court observed: (SCC p. 96, paras 243-46)*

“243. Lexicon refers to Cicutti v. Suffolk County Council [(1981) 1 WLR 558 : (1980) 3 All ER 689 (DC)] to denote that the word ‘ordinarily’ is primarily directed not to duration but to purpose. In this sense the question is not so much where the person is to be found ‘ordinarily’, in the sense of usually or habitually and with some degree of continuity, but whether the quality of residence is ‘ordinary’ and general, rather than merely for some special or limited purpose.

244. The words ‘ordinarily’ and ‘resident’ have been used together in other statutory provisions as well and as per Law Lexicon they have been construed as not to require that the person should be one who is always resident or carries on business in the particular place.

245. The expression coined by joining the two words has to be interpreted with reference to the point of time requisite for the purposes of the provision, in the case of Section 20 of the RP Act, 1950 it being the date on which a person seeks to be registered as an elector in a particular constituency.

246. Thus, residence is a concept that may also be transitory. Even when qualified by the word ‘ordinarily’ the word ‘resident’ would not result in a construction having the effect of a requirement of the person using a particular place for dwelling always or on permanent uninterrupted basis. Thus understood, even the requirement of a person being ‘ordinarily resident’ at a particular place is incapable of ensuring nexus between him and the place in question.”

31. *Reference may be made to Bhagyalakshmi v. K. Narayana Rao [AIR 1983 Mad 9] , Aparna Banerjee v. Tapan Banerjee [AIR 1986 P&H 113] , Ram Sarup v. Chimman Lal [AIR 1952 All 79] , Vimla Devi v. Maya Devi [AIR 1981 Raj 211] and Giovanni Marco Muzzu (Dr.), In re [AIR 1983 Bom 242] , in which the High Courts have dealt with the meaning and purport of the expressions like “ordinary resident” and “ordinarily resides” and taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place one's ordinary abode.”*

20. The Hon’ble Apex Court, based upon the facts of the aforesaid case, has considered as would be evident from paragraph-36 that the question

whether the decision to allow the appellant and Kush, the minor son, to stay back in Delhi instead of returning to America was a voluntary decision as claimed by the appellant or a decision taken by the respondent under duress as alleged by him was a seriously disputed question of facts, a satisfactory answer to which could be given either by the District Court where the custody case was filed or by the High Court only after the parties had been given an opportunity to adduce evidence in support of their respective versions.

21. It is, thus, evident from the proposition so laid by the Hon'ble Apex Court that the meaning and purport of the expression "ordinary resident" and "ordinarily resides" and taken the view that the question whether one is ordinarily residing at a given place depends so much on the intention to make that place one's ordinary abode.
22. The co-ordinate Bench of this Court in the case of ***Rakhi Kumari @ Rakhi Kumari Mishra, reported in 2017 SCC OnLine Jhar 178*** has been pleased to consider the issue of jurisdiction on the ground of child residing at the place on the day when the petition has been filed for custody of the guardianship. The factual aspect of the present case as would be evident from the consideration so made by the co-ordinate Bench of this Court at paragraph-9 is that the wife had deserted the respondent. Thereafter, the child was born in a hospital at Bhagalpur. The respondent, therefore, has pleaded in the said case that the child is continuously residing with his mother at Sultanganj in the district of Bhagalpur within the State of Bihar.
23. The co-ordinate Division Bench has further considered that there was no averment in the application filed by the respondent in the Court below, which has been brought on record by way of counter affidavit filed by the respondent to show that the child and the mother ever came to Ranchi and resided at Ranchi.
24. The co-ordinate Bench, therefore, came to the conclusive finding that the ordinary residence of the child shall be at Sultanganj in the district of Bhagalpur within the State of Bihar where the child is continuously residing with his mother. The suit, therefore, filed for custody of the child has been held to be not maintainable within the territorial jurisdiction in

the Court at Ranchi and accordingly, the judgment passed by the learned Family Court at Ranchi has been interfered with by setting it aside.

25. The issue of residence, in order to have the jurisdiction to the concerned court, has also been taken into consideration by the Hon'ble Apex Court in the case of *Jeewanti Pandey v. Kishan Chandra Pandey*, ((1981) 4 SCC 517, wherein it has been held at paragraph-12 that in order to give jurisdiction on the ground of 'residence', something more than a temporary stay is required. It must be more or less of a permanent character, and of such a nature that the Court in which the respondent is sued, is his natural forum. The word 'reside' is by no means free from all ambiguity and is capable of a variety of meanings according to the circumstances to which it is made applicable and the context in which it is found. It is capable of being understood in its ordinary sense of having one's own dwelling permanently, as well as in its extended sense. In its ordinary sense 'residence' is more or less of a permanent character. The expression 'resides' means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. In Webster's Dictionary, 'to reside' has been defined as meaning 'to dwell permanently or for any length of time', and words like 'dwelling place' or 'abode' are held to be synonymous. Where there is such fixed home or such abode at one place the person cannot be said to reside at any other place where he had gone on a casual or temporary visit, e.g. for health or business or for a change. If a person lives with his wife and children, in an established home, his legal and actual place of residence is the same. If a person has no established home and is compelled to live in hotels, boarding houses or houses of others, his actual and physical habitation is the place where he actually or personally resides.
26. This Court has also considered the factual aspect as has been taken into consideration by the Kerala High Court in the case of *Divya J. Nair vs. S.K. Sreekant*, 2018 SCC OnLine Ker 3375 wherein reliance has been placed upon the judgment rendered by the Hon'ble Apex Court in the case of *Jeewanti Pandey v. Kishan Chandra Pandey* (supra) and by taking

into consideration the meaning of ordinary residence and applying the same on the facts of the said case as has been referred at paragraph-13 thereof, wherein the factual aspect of the said case was as per the case of the appellant, i.e., wife that they have been living separately from 08.03.2017 onwards. Due to estrangement between the parties, whatever be the reason, the appellant has been staying in her house at Ottapalam with the child from 08.03.2017 onwards. Till that date the child was residing with her parents in the house of the respondent at Neyyattinkara. The school records produced by the respondent would reveal that the child has been studying in a school near the house of the respondent from the year 2016 onwards. The original petition was filed in the court below on 05.04.2017. The child from 08.03.2017 to 19.03.2017, had been residing in the house of the respondent at Neyyattinkara. In such circumstances, the finding made by the concerned family court that the child has been ordinarily residing in the house of the respondent at Neyyattinkara cannot be found fault with. On the basis of the temporary stay or residence of the child for the short period from 08.03.2017 to 19.03.2017 in the house of the appellant at Ottappalam, it cannot be found that the child has been ordinarily residing within the jurisdiction of the Family Court, Ottappalam.

27. This Court, in the light of the discussion so made by the Hon'ble Apex Court in the aforesaid case and the judgment passed by the different High Courts, is adverting back to the facts of the present case as has been taken into consideration by the learned court but before considering the factual aspect, reference of the order passed by the co-ordinate Bench of this Court dated 25.09.2024 needs to be made herein.
28. The co-ordinate Bench has called upon the appellant along with his two children and the respondent. Daughter of the appellant who was aged about more than 06 years, has expressed her desire to stay with her father, the appellant. However, the same was seriously disputed by the grandmother (*Naani*) on the ground of being tutored by the appellant. For ready reference, the said order is being referred as under:

“Pursuant to the order dated 10.09.2024 the appellant along with his two children and the respondent are physically present.

The daughter of the appellant who is aged more than six years has expressed her desire to stay with her father.

The respondent who happens to be the grandmother of the children has stated that the children specially the daughter has been tutored and in fact she is seeing her grandchildren for the first time after 2½ years and that is perhaps the reason for the disinclination of the daughter to reside with her grandmother.

Whatever has been stated by the respective parties clearly reveals that there is no possibility of a compromise and since the impugned order relates to a challenge made to the jurisdiction of the Family Court at Ranchi to hear the suit, we are inclined, therefore, to consider this appeal on merits.

Let this appeal be listed on 15th October, 2024 under the same heading.

It is expected that until further orders passed by us, the respondent shall not proceed with the criminal contempt pending before the learned trial court as a continuation of the undertaking given by the learned counsel for the respondent which has been noted in the order dated 10.09.2024.

List accordingly.”

29. Coming to the pleadings filed on behalf of the parties which is available in the Trial Court Record called for by this Court vide order dated 02.04.2025.
30. The petitioner (respondent herein), Indu Bala Devi, in the petition filed as contained under Section 12 of the Guardians and Wards Act, 1890 has pleaded that both the minor children were born at the house of the petitioner and it was the petitioner who used to take proper care of the children right from their birth until they were abducted by the opp. party (appellant herein) for which a complaint case was also registered in the Lalpur Police Station.
31. The ground of jurisdiction before the learned Family Court, Ranchi has been made out on the basis of the aforesaid pleading as referred in paragraph-2 thereof. For ready reference, paragraph-2 of the petition filed by the petitioner (respondent herein) under Section 12 of the Act, 1890 is being referred as under:

“2. That it is pertinent to mention here that the both the minor grand-childrens were born at the house of the petitioner and it was the petitioner who used to take proper care of the childrens right from their birth until

they were abducted by the O.P. on 08.11.2021 in regard of which a complaint was made by the husband of the petitioner in Lalpur P.S. but neither the police has taken any action in this regard and nor the O.P. has ever allowed the childrens to even talk to the poor petitioner for even a once which is a gross injustice to her.”

32. The opposite party had appeared and filed application appending therein the admission form of the daughter who is studying in school at Bihar Sharif in the district of Nalanda and certificate of enrolment of Aadhar Card and Aadhar Card Registration Certificate.
33. A petition had also been filed under Section 9(1) of the Act, 1890 raising the issue of jurisdiction and maintainability of the petition wherein the following grounds have been taken:

“4. That present suit has been filed by grandmother (nani) of children i.e daughter and son of the answering respondent for their guardianship.

5. That the answering respondent is father of girl Saanvi and boy Anmay, who were born on 06.06.2018 and 20.10.2020 and he is natural guardian of the children in terms of Section 6(a) of Hindu Minority and Guardianship Act, 1956.

*6. That it is also submitted that there is jurisdictional error in entertaining the present suit by this Learned Court at Ranchi. Section 9(1) Guardians and Wards Act, 1890 reads “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.” The minors are residing with their father i.e with the present respondent at Bihar Sharif, Nalada since 08.11.2021 and the same is ordinary place of the residence of the minors. Hence in terms of section 9(1) Guardians and Wards Act, 1890, this Learned Court is having **lack of jurisdiction** in the instant matter.*

7. That at the very outset the respondent begs to submit his preliminary objection that the present case is barred by section 19(b) of the Guardian and Wards Act, 1890 against

the Respondent. The respondent is the father of minors and is very much fit to as guardian of the person of the minors.

8. *That Section 6(a) of Hindu Minority and Guardianship Act, 1956 reads as under:*

Natural guardians of a Hindu minor—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are –

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.”

9. *That by the virtue of section 9(1) of Guardians and Wards Act, 1890 the present learned court has no jurisdiction to entertain the present suit and this objection is required to be adjudicated first.”*

34. The rejoinder to the aforesaid objection of the jurisdiction and maintainability has been filed on behalf of the petitioner reiterating the ground as was taken at paragraph-2 of the petition filed by the petitioner (respondent herein) under Section 12 of the Act, 1890 which has been referred and quoted above.

35. The learned court has rejected the preliminary objection on consideration of the provision as contained under Section 9(1) of the Act, 1890 wherein it has been provided, as per the learned Family Court, that the court is to see whether the minors ordinarily reside within the jurisdiction of this Court. The Court has gone into the issue of marriage of defendant and the mother of the children which was solemnized in Ranchi on 09.07.2016. Both the children were born at Ranchi on 06.06.2018 and 20.10.2020 respectively and by their birth they were residing in Ranchi alongwith their mother (now deceased) and maternal grandparents. The mother of the minors died on 18.05.2021 due to COVID-19 Pandemic.

36. The learned court has further referred that the defendant, the appellant herein, appears to live mostly in the house of the plaintiff, the respondent herein, and even after death of his wife, he continued to live in the house of the plaintiff, the respondent herein, along with his both the children who were taken care by the plaintiff.

It has further been referred that the defendant had abducted both the children on 08.11.2021 and carried them to his native place, i.e., Bihar Sharif, Nalanda without giving any information.

37. The learned Family Court, Ranchi in the aforesaid premise, has come to the conclusion that moving of minors from one place to another and consequently from one jurisdiction to another does not help parties who raises plea of jurisdiction. The main question, i.e., whether the minors were ordinarily residing in any particular place has to be preliminary decided on the facts of the particular case.

38. The learned Family Court by referring that the *main question i.e., whether the minors were ordinarily residing in any particular place has to be preliminary decided on the facts of the particular case*, straightway has come to the view that both the children are ordinarily resident of Ranchi as since their birth they were residing in Ranchi along with the plaintiff and hence, has held that the Family Court, Ranchi is having the jurisdiction to entertain the suit.

39. It has been submitted by the learned counsel for the appellant that so far as making of complaint of kidnapping the children is concerned, a criminal case was instituted in which the appellant has been acquitted. Therefore, the case of kidnapping having been disproved by the finding given by the competent court of criminal jurisdiction, as per the mandate of the statute, the father is the natural guardian.

40. Section 13 of the Hindu Minority and Guardianship Act, 1956 is being taken note herein wherein the welfare of the minor has been considered to be of paramount bearing, meaning thereby, if the dispute is in between the guardian, even then the father is the natural guardian then the welfare of the children is required to be considered which will be on the basis of the wish of the child/children.

41. It is evident from the order dated 25.09.2024 wherein the daughter who was aged more than 06 years has expressed her wish to live with her father, the appellant herein.
42. As per the statements of objects and reasons of the Guardians and Wards Act, 1890, the same is to consolidate and amend the law relating to Guardian and Wards, is to be considered on the issue of guardianship in between the mother and father. However, the guardian is also to be taken into consideration in the light of the aforesaid provision which means a person having the care of the person of a minor or of his property, or of both his person and property.
43. Section 9(1) of the aforesaid Act confers jurisdiction upon the concerned Family Court to entertain an application with respect to the guardianship of the person of the minor, which shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.
44. The word “ordinarily resides” has been interpreted by the Hon’ble Apex Court in the case of *Ruchi Majoo vs. Sanjeev Majoo* (supra) taking note of the meaning as referred by the *Black's Law Dictionary* and in the *Webster's Dictionary*.
45. Adverting to the facts of the present case, it is the admitted case that the appellant is the father of both the children and both the children are residing along with the appellant at their parental house, i.e., in Bihar Sharif in the district of Nalanda. The documents to the effect of studying in the school, i.e., Admission Form, is also made part of the application filed raising preliminary objection. The daughter since is studying in Bihar Sharif, Nalanda and there is no denial of the aforesaid fact as also the appellant being the natural guardian and if both the children are living in Bihar Sharif in the district of Nalanda, hence, as per the interpretation of the word “ordinarily resides”, both the children will be admitted to be residing in the present abode.
46. This Court, therefore, in view of the present abode of both the children in their parental house, is of the view that the place of residence of both the children will be at Bihar Sharif in the District of Nalanda but the learned Family Judge has not considered this aspect of the matter rather has gone

into the past, i.e., living in the maternal grandparents' house, as such, the jurisdiction to file application for guardianship will not be at Ranchi rather in Bihar Sharif in the district of Nalanda.

47. The word "ordinarily resides" does not speak of past rather present place of residence which, as per the pleading made by the appellant in the objection petition, is Bihar Sharif in the district of Nalanda.
48. The aforesaid aspect since has not been taken into consideration rather the learned Family Judge has gone into the past ignoring the true meaning of "ordinarily resides" holding the jurisdiction of the Family Court at Ranchi for entertaining the petition which according to the considered view of this Court, is not correct interpretation of the word "ordinarily resides" as referred in Section 9(1) of the Act, 1890.
49. Further, the learned Family Judge has also gone into the premise of abduction of both the children and that is the reason the conclusion has been arrived at that moving of minors from one place to another does not help parties to raise the plea of jurisdiction but the case of abduction being not proved by the competent court of criminal jurisdiction, hence, the said finding is also not correct.
50. Mr. Mazumdar, learned senior counsel for the respondent has relied upon the judgment rendered by the Hon'ble Apex Court in the case of ***Ruchi Majoo vs. Sanjeev Majoo*** (supra) but the same is not of any aid in view of the fact that even the Hon'ble Apex has observed in paragraph-24 that whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact which can only be adjudicated before the competent court having jurisdiction but the Hon'ble Apex Court has been pleased to hold that unless the jurisdictional facts are admitted it can never be a pure question of law.
51. This Court is only dealing with the issue of jurisdiction to entertain a petition and when the question of jurisdiction is being raised which is to be answered, it is not available for the Court to go into the issue of merit rather the same is to be raised before the court having its jurisdiction.

52. This Court, considering the aforesaid fact, is of the view that the impugned judgment needs to be interfered with.
53. Accordingly, the impugned order dated 17.01.2024 passed in Original Suit No. 308 of 2022, is hereby, quashed and set aside.
54. Pending interlocutory application(s), if any, also stands disposed of.
55. The respondent is at liberty to make appropriate application before the Court having its jurisdiction.

I agree

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Saurabh/A.F.R.