HC-KAR

NC: 2026:KHC:63093-DB
MFA No. 4345 of 2026

CNR: KAHC010402922026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE R DEVDAS

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

MISCELLANEOUS FIRST APPEAL NO. 4345 OF 2026

BETWEEN:

SMT. RUMA TOMAR
W/O SRI. SHASHANK CHAUDHARY,
AGED ABOUT 40 YEARS,
R/A: TREKNOMADS, NO.37,
6TH MAIN ROAD, JAGRUTHI COLONY,
BOB COLONY, PUTTENAHALLI,
J.P. NAGAR, 7TH PHASE,
BENGALURU - 560078.
PRESENTLY R/A: FLAT E 707,
NITESH HIDE PARK APARTMENTS,
2ND CROSS ROAD, HULIMAVU,
B.G. ROAD, VTC BENGALURU SOUTH,
BENGALURU 560076.

...APPELLANT

(BY SRI. UDAY HOLLA SR. COUNSEL A/W
SRI. H S PRASHANTH., ADVOCATE)

Digitally signed by JUANITA THEJESWINI
Location: HIGH COURT OF KARNATAKA

AND:

SRI SHASHANK CHAUDHARY
S/O SRI. VIRENDRA VERMA,
AGED ABOUT 43 YEARS,
R/A D-1704, ANJARA HOMES,
SECTOR 16, NOIDA EXTENSION,

NOIDA - 201303, UTTAR PRADESH.

…RESPONDENT

(BY SMT. SRUTI CHAGANTI., ADVOCATE)

THIS MFA IS FILED U/S.19(1) OF THE FAMILY COURTS ACT, 1984, AGAINST THE JUDGMENT AND DECREE DT. 09.06.2026 PASSED IN G&WC NO.123/2026 ON THE FILE OF THE V ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU, PARTLY ALLOWING THE I.A.NO. 5 FILED UNDER ORDER 7 RULE 11(a) AND (d) READ WITH SECTION 151 OF CPC SECTION 9 OF THE GUARDIANS AND WARDS ACT AND SECTION 6(a) OF THE HINDU MINORITY AND GUARDIANSHIP ACT AND ETC.

THIS APPEAL HAS BEEN HEARD AND RESERVED ON 12.11.2026 AND COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, THE COURT DELIVERED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE R DEVDAS
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE R DEVDAS)

This Miscellaneous First Appeal has been filed by the appellant, who was the petitioner in G&WC No.123/2026, being aggrieved of the impugned order dated 09.06.2026 passed by the learned V Additional Principal Judge, Family Court, Bengaluru, whereby the petition filed by the

appellant herein has been returned to the appellant to present the same before the competent jurisdictional court.

2. The appellant herein had filed the petition invoking Sections 7 and 8 of the Guardian and Wards Act, 1890 read with Section 13 of Hindu Minority and Guardianship Act, seeking a declaration that the appellant herein to be the *de jure* guardian of their minor son and grant the appellant herein permanent and exclusive custody of the minor son. The appellant further sought to restrain the respondent herein from interfering with such custody, without the leave of the Court.

3. The respondent herein entered appearance and filed an application under Order VII Rule 11 (a) & (b) of the Code of Civil Procedure and sought for rejection of the petition on the ground that there is no cause of action for the petition and the petition is barred by law. It was contended by the respondent herein that there is no pleading in the petition filed by the appellant that their son

ordinarily resides within the jurisdiction of the Family Court in Bengaluru, as mandated by Section 9 of the Guardian and Wards Act, 1890 (hereinafter referred to as 'G &WC Act' for short). It was contended that the child who was studying in a school in Noida was taken away by the appellant, without the permission of the respondent and the appellant sought for permission from the school authorities to permit the child to take up the examinations online. Thereafter, the appellant fraudulently gave a representation to the school authorities at Noida stating that she had obtained an order at the hands of the Family Court at Bengaluru and thereby obtained a Transfer Certificate and joined the child in a school at Bengaluru.

4. The Family Court accepted the contention of the respondent that such an application/petition seeking custody of the child, if filed soon after the removal of the child from its ordinary residence, the new place where the child is brought after the removal from its ordinary residence, has to be ignored. Further, the new place to

which the minor may have gone can become the place of ordinary residence of the minor only after the minor has settled down at that place for a reasonably long period. Accordingly, the Family Court at Bengaluru allowed the application filed by the respondent and directed the office to return the petition to the appellant herein to present the same before the competent jurisdictional court.

5. Learned Senior Counsel Sri Udaya Holla, appearing for the appellant submitted that the leading case on the question of 'ordinary residence' or place where the child ordinarily resides, as contemplated in Section 9 of the G & WC Act, is ***Ruchi Majoo /Vs./ Sanjeev Majoo (2011) 6 SCC 479,*** decided by the Hon'ble Supreme Court and in the said case, in paragraph No.24, Their Lordships have clearly held as follows:

> 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."

6. Learned Senior Counsel submitted that although there are many cases cited before the Family Court and before this Court, there cannot be any doubt that the judgment in ***Ruchi Majoo*** holds the field and unless an enquiry is held, the Family Court could not have arrived at a conclusion that the place of ordinary residence of a child in question is Noida. Moreover, it is an undisputed fact that the petitions filed by the respondent before the Family Court at Noida, Uttar Pradesh, have been stayed by the Hon'ble Supreme Court in Transfer Petition (Civil) No.1333/2026 and a Habeas Corpus Petition in W.P.(HC) No.305/2026 filed by the respondent at the High Court of Judicature at Allahabad was also dismissed on 28.03.2026. That being the admitted facts, which were also brought to the notice of the Family Court at Bengaluru, the Family Court has erred in returning the

petition filed by the appellant, on the ground that it has no jurisdiction.

7. Per contra, learned Counsel Smt.Sruti Chaganti, appearing for the respondent vehemently contended that the Family Court has considered the material information placed by the appellant herself in the petition and has rightly come to a conclusion that the ordinary place of residence of the child is Noida and therefore, such a petition seeking custody of the child could not have been filed in Bengaluru. The Family Court has only considered that admitted facts which are borne out of the records furnished by the appellant herself along with the petition. The Family Court has followed all the requirements which are necessary for consideration of an application filed under Order VII Rule 11 of CPC. The learned Counsel has placed reliance on two recent decisions of this Court in the case of ***Smt. Priyanka V. Vs. Sri Prashanth D.Veerapur*** in MFA No.1492/2026 (DB) decided on 20.08.2026 and a decision of a learned Single Judge in

the case of ***Smt.Sneha Harischandra Sumithra Vs. Mr.Sudhir Das Venkata Das*** in W.P.No.25901/2024 (GM-FC) decided on 19.12.2025, where it was held that the Court is required to consider the circumstances in which the child was residing at a particular place, the duration of such residence and the circumstances in which the child came to be removed from that place. Such subsequent removal cannot, by itself, result in the ordinary residence of the child being changed so as to defeat the jurisdiction of the Court which otherwise had jurisdiction to consider the question of custody. The co-ordinate Bench has held that such an act of unilateral removal of the child from its ordinary place of residence will enable such a parent to contend that the Court at that place had no jurisdiction. It was therefore held that such a course cannot be permitted to operate to the prejudice of the other parent, particularly when the custody of a minor child is involved.

8. Heard learned Senior Counsel Sri.Udaya Holla appearing for the appellant and Smt.Sruti Chaganti, learned Counsel for the respondent and perused the appeal memo.

9. At the outset, this Court should observe a technical defect on the part of the respondent herein. There is a good deal of difference in the provisions contained in Rule 10 and Rule 11 of Order VII of the CPC. While Rule 10 provides for return of plaint to be presented to the Court in which the suit should have been instituted, owing to the jurisdiction, Rule 11 contemplates rejection of the plaint on any of the grounds enumerated therein. The application filed by the respondent is invoking Order VII Rule 11(a) and (d) read with Section 151 of CPC, read with Section 9 of the Guardian & Wards Act and Section 6(a) of the Hindu Minority and Guardianship Act. It has been contended by the respondent, in the application that the petition filed by the appellant herein lacks cause of action and is barred by law. However, in the

accompanying Affidavit, the respondent has contended that their child is ordinarily residing in Noida and not in Bengaluru and therefore, there is no plea taken by the appellant that the child is ordinarily residing in Bengaluru, within the jurisdiction of the Family Court at Bengaluru. Various contentions have been raised by the respondent to buttress his contention that the child is ordinarily residing in Noida, U.P. and not in Bengaluru. It has been contended that the child was illegally removed by the appellant herein and taken away from the school, without the knowledge of the respondent and without proper permission of the school authorities at Noida. Suffice to say that the entire contention revolves around the question of "ordinary residence" of the child as contemplated in Section 9 of the G & WC Act, which are mandatory for the purpose of conferring jurisdiction on the Family Court to decided such cases of custody. Nothing much has been said about the cause of action, although the provision has been invoked in the application.

10. In the considered opinion of this Court, such a plea and prayer cannot be made invoking Order VII Rule 11 of CPC, to contend that the plaint/petition is barred by any law. It is clear from the said contentions raised by the respondent that he is seeking to return the plaint for want of jurisdiction. Surely, such a plea or prayer to return the plaint for want of jurisdiction would fall under Rule 10 of Order VII and not under Rule 11, which is invoked by the respondent. It is noticeable that the learned Judge of the Family Court has also directed the office to return the petition so that the same could be presented before the competent jurisdictional Court, which again would be in terms of sub-rule (2) of Rule 10 of Order VII. This Court is therefore of the considered opinion that on technicalities, the application filed by the respondent herein should have been rejected.

11. Even otherwise, this Court would accept the contention of the learned Senior Counsel Sri.Udaya Holla, having regard to the law laid down by the Hon'ble

Supreme Court in the case of ***Ruchi Majoo*** (supra) 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. 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. Therefore, the least that the Family Court should have done is to hold an enquiry into the question as to which is the place of ordinary residence of the child.

12. This Court should observe that even under a duly constituted application filed under Order VII Rule 11 of CPC, when a plea of 'res judicata' is raised by the defendant in a suit, which may fall under clause (d) of Rule 11 of Order VII, which bars a subsequent suit on the same cause of action, the Hon'ble Supreme Court has mandated that such a question cannot be decided merely on assertions made in the application seeking rejection of plaint under Order VII Rule 11 of CPC. It has been held by the Hon'ble Supreme Court in the cases of ***Keshav Sood***

Vs. Kirti Pradeep Sood and Others **2023 SCC OnLine SC 2459** and ***Pandurangan Vs. T.Jayarama Chettiar and Another*** **(2025) 10 SCC 279** that the adjudication of such issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Similarly, when such question of ordinary residence of the child is raised before the Family Court, the same requires consideration on the basis of admitted facts or an enquiry permitting evidence to be led by the parties enabling the Court to decide such an issue. Without an enquiry, such an issue cannot be decided.

13. For the reasons stated above, this Court is of the considered opinion that the impugned order cannot be sustained.

14. Accordingly, this Court proceeds to pass the following:

ORDER

i) The appeal is ***allowed***.

ii) The impugned order dated 09.06.2026 passed by the learned V Additional Principal Judge, Family Court, Bengaluru, in G&WC No.123/2026 is hereby quashed and set aside.

iii) The petition in G & WC No.123/2026 is restored on the file of the learned V Additional Principal Judge, Family Court, Bengaluru. The learned Judge of the Family Court shall proceed in accordance with law.

iv) The parties are directed to appear before the learned V Additional Principal Judge, Family Court, Bengaluru, on **23rd November 2026**, without waiting for further notice.

v) Liberty is however reserved to the respondent to file a fresh application on the same cause of action, quoting the correct

provision. If such an application is filed, the learned Judge of the Family Court shall consider the same, in the light of the observations made hereinabove and dispose of the same as expeditiously as possible.

15. Pending Interlocutory Applications, if any, stand disposed of.

Sd/-
(R DEVDAS)
JUDGE

Sd/-
(DR.K.MANMADHA RAO)
JUDGE

KLY/JT
List No.: 1 Sl No.: 36