

Act VIII-177/2024

Present : Kumkum Chattopadhyay (JO Code-WB00742)

CNR: WBSP01-011654-2024

Order No.08

01.07.2026

Today is the date fixed for hearing the petition praying for rejection of plaint filed by the respondent.

Heard both sides. Perused the petition as well as the written objection. Considered.

Ld. Advocate for the respondent has submitted that their child Anwita Mudhusudan Murarka is ordinarily residing in Mumbai and is in lawful custody of the respondent. It is further submitted by her that at the time of divorce on mutual consent as per terms it is agreed that permanent custody of the child shall remain with respondent / mother and she has waived her right of permanent alimony against her husband. The custody of the minor child was conclusively decided in the decree of divorce on mutual consent. So, this suit is barred by res-judicata. It is further submitted by her that this Court also lacks jurisdiction to entertain the present case because the minor is now ordinarily residing in Mumbai. As such this petition is filed by the respondent / mother praying for rejecting and dismissing the present case.

Ld. Advocate for the petitioner / father raised objection. He has submitted that Family Court and Court of Wards are different to each other and the order and proceeding in Family Court is not binding to Court of Wards. He has further submitted that the minor child since birth became the owner of the property as per Mitakshara School of Hindu Law and he used to reside at Kiddhirpore, P.S.- Watgunge within the jurisdiction of this Court. So, this court has got very much jurisdiction to try this case and this petition is liable to be rejected.

Ld. Advocate for the petitioner / father cited two decisions reported in AIR 1983 Madras 9 and AIR 1981 Calcutta 206.

I have carefully gone through the decisions. In view of the decisions of Hon'ble High Court ordinary residence of the minor u/s 9(1) in this case is with her father in 127A

Narkeldanga Main Road, Phoolbagan, Kolkata-54. This is an application u/s 25 of Guardian and Wards Act for custody of minor daughter of the parties. From the documents filed by the respondent / mother it appears that the marriage dated 04.03.2014 solemnized between the parties was dissolved from the date of order i.e. 09.02.2024 by a decree of divorce by mutual consent in Family Court No.3 at Mumbai being No. 2874 of 2021. As per the consent terms of the decree the petitioner / father undertakes to waive all his right to claim access and / or custody of the daughter Anwita Mudhusudan Murarka. The permanent custody of the daughter will be with the mother. That consent term which is

Continued.

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Exhibit-15 shall form part of the decree of the petition no. 2874 of 2021. It is admitted by both parties that Family Court has ordered decree of divorce by mutual consent and the consent term shall form part of the decree. So, it reveals that 3rd Family Court, Mumbai exercises jurisdiction custody of the minor daughter of the parties and its decisions are legally bindings on all parties including Courts of Wards. The issues regarding custody of the minor daughter decided and having attained finality, should not be allowed to be reopened or re-agitated over again. This issue has been already decided by Court of competent jurisdiction and there is no appeal pending before in any Court so this Court has got no jurisdiction to decide the matter.

Hence this petition filed by the respondent / mother is allowed on the ground that this matter is barred by the principal of *res-judicata*.

This case is hereby dismissed as barred by the principal of *res-judicata*.

Update in CIS.

Note in relevant register.

Dictated & Corrected by me.

Sd/- K. Chattopadhyay

Additional District Judge
3rd Court, Alipore

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