



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Civil Misc. Appeal No. 1031/2026

Amarchand S/o Tulsiram, Aged About 35 Years, R/o Behind Fci  
Godown, Near Hanuman Mandir, Banglanagar, Bikaner. 334001

----Appellant

Versus

Papita W/o Amarchand, Aged About 33 Years, R/o Malsisar,  
Tehsil Sujangarh, District Churu.

----Respondent

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| For Appellant(s)  | : | Mr. Tabish Samdani |
| For Respondent(s) | : |                    |

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**HON'BLE MR. JUSTICE ARUN MONGA**  
**HON'BLE MR. JUSTICE YOGENDRA KUMAR PUROHIT**

**Order(Oral)**

**23/02/2026**

**Per: Arun Monga, J**

1. The appellant-father seeks quashing of the judgment/decreedated 22.01.2026 passed by the learned Family Court, whereby his petition under Sections 10 & 25 of the Guardians and Wards Act for custody of the minor child was returned without being decided on merits for lack of territorial jurisdiction.
2. Brief facts of the case are that the appellant instituted a petition under Sections 10 and 25 of the Guardians and Wards Act, 1890 before the Learned Family Court No. 1, Bikaner on 30.04.2024, seeking guardianship and custody of the minor children. The marriage between the appellant and the respondent was solemnized on 30.10.2009 at Malsisar, Tehsil Sujangarh, District Churu, after which the parties resided together in Bikaner.



Out of the wedlock, two children were born i.e. a daughter, Bhavana (born on 16.02.2012), and a son, Pankaj, born approximately one and a half years thereafter.

2.1. After a few years of marriage, matrimonial discord arose, and the respondent left the matrimonial home in Bikaner to reside at her parental house in Malsisar, Tehsil Sujangarh, District Churu. Prior thereto, the minor children had been residing and pursuing their education in Bikaner under the care and supervision of the appellant. However, the respondent took the children from Bikaner to Sujangarh without the knowledge or consent of the appellant.

2.2. The appellant's repeated requests to meet the children were allegedly denied by the respondent, thereby compelling him to initiate guardianship proceedings for their welfare.

2.3. The Learned Family Court at Bikaner initially assumed jurisdiction on 03.05.2024 and issued notice to the respondent. It further allowed the appellant's application under Section 12 of the Act vide order dated 31.05.2025, thereby granting interim protection concerning the minors. However, despite having exercised jurisdiction, the Learned Family Court, by the impugned order dated 22.01.2026, returned the petition on the ground of lack of territorial jurisdiction.

3. Hence, the instant appeal.

4. Learned counsel for the appellant submits that the impugned order dated 22.01.2026 is ex facie illegal and unsustainable in law. The Learned Family Court, having already entertained the guardianship petition and adjudicated the application under Section 12 of the Guardians and Wards Act, 1890 on 31.05.2025,



had conclusively assumed territorial as well as subject-matter jurisdiction. After having applied its judicial mind and passed substantive orders affecting the rights of the parties, the Court could not subsequently return the petition on the ground of lack of territorial jurisdiction.

4.1. It is further contended that the Learned Family Court erred in ignoring material evidence on record demonstrating that the minors were ordinarily residing at Bikaner on the date of institution of the petition. The school records and certificates clearly establish their continuous education and settled residence at Bikaner, reflecting stability and integration into the local environment. It is a settled principle of law that “ordinary residence” is determined by continuity, duration, and the intention of the lawful guardian, and not by temporary presence or unilateral removal by one parent. Any forcible or unauthorized relocation cannot divest a competent court of jurisdiction, which crystallizes with reference to the ordinary residence of the minors at the time of filing.

4.2. That the Learned Family Court failed to apply the paramount consideration governing custody and guardianship matters, namely, the welfare and best interests of the minors. By resting its decision solely on a technical objection of territorial jurisdiction, the Court overlooked its statutory duty to prioritize the welfare of the children above procedural technicalities, is the argument.

4.3. Learned counsel for the appellant argues that the impugned order suffers from material irregularity, jurisdictional error, and has resulted in a manifest failure of justice. The return of the



petition, despite prior exercise of jurisdiction and grant of interim relief, has caused grave prejudice to the stability, education, and emotional well-being of the minors.

5. In the aforesaid background, we have heard learned counsel for the appellant.

6. At the very threshold, reference may be had to Section 9 of the Guardian and Wards Act, 1890 which reads as under:

***“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.*

*(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.*

*(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”*

7. The aforesaid provision in no uncertain terms envisages that the petition should be filed where the minor ordinarily resides.

8. On a query put to learned counsel for the appellant he concedes that both the minors are currently in the custody of their mother and are residing at Sujangarh.

9. In the premise, we are of the view that learned Guardian Judge rightly returned the plaint. English translation of relevant portion of impugned order reads as under:

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*The petitioner has filed the original petition on the ground that from the wedlock of the petitioner and the respondent, a daughter Bhavna was born on 16.02.2012, and thereafter a son Pankaj, aged about one and a half years, was born. The respondent has kept both the said minor children at her parental home, i.e., Malsisar, Tehsil Sujangarh, District Churu. Their paramount welfare is not with the respondent. Thus, in the main application, the petitioner has prayed that he be appointed as the guardian of the minor children Bhavna and Pankaj and that their custody be taken from his wife, the respondent Papita, from Malsisar, Tehsil Sujangarh, District Churu, and that he be appointed as guardian and be granted their custody.*



*As stated in his application, the petitioner also admits that at the time of filing the main application, the minor children Bhavna and Pankaj were not residing within the territorial jurisdiction of Bikaner, but were residing within the jurisdiction of Churu along with their mother Papita. However, the petitioner filed another application dated 20.01.2026 disclosing the fact that until 09.04.2025 both children were studying while staying with the petitioner. The respondent forcibly got the T.C. issued and took them along with her to Churu. Thus, in both situations, the petitioner admits that after 30.04.2024 the minor children were not ordinarily residing within the local jurisdiction of this Court.*

*Section 9(1) of the Guardians and Wards Act, 1890 provides as follows:*

*“If the application is with respect to the guardianship of the person of a minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.”*

*From the record available on the file, it is an admitted position that from the time of filing the application until now, both minor children have not been ordinarily residing within the territorial jurisdiction of Bikaner, but have been admitted in a school at the respondent's parental home in Malsisar, Tehsil Sujangarh, District Churu, where they are studying and residing with their mother. Therefore, in accordance with law, both minor children are not ordinarily residing within the territorial jurisdiction of this Court.*

*Consequently, since the original petition filed by the petitioner under Section 25 of the Guardians and Wards Act, 1890 is not maintainable within the territorial jurisdiction of this Court in view of Section 9(1), it is hereby directed to return the original petition filed by the petitioner.*

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10. We are in agreement with the aforesaid view taken by the learned Guardian Judge.

11. Order dated 31.05.2025 of the learned Family Court disposing of the application under Section 12 of the Guardian and Wards Act (for ad interim relief) as well as the main petition seeking custody of the children were both subject to final adjudication of the same by the learned Guardian Judge. Merely because the final adjudication by the learned Family Court is based on the premise that the main petition itself was not maintainable before it for lack of territorial jurisdiction, the final order under appeal herein cannot be invalidated on the ground that the main petition had since been earlier entertained and the ad interim application under Section 12 of the Act had also been disposed of, therefore, the Family Court ought to have proceeded



with the main petition, even if there was want of territorial jurisdiction.

12. In our opinion, the learned Family Court rightly refrained from expressing any opinion in the matter once it found that it did not have the requisite jurisdiction on the territorial grounds and therefore, no grounds to interfere are made out.

13. Accordingly, the appeal being bereft of merits, is dismissed.

14. Stay petition and pending applications also stand disposed of.

**(YOGENDRA KUMAR PUROHIT),J**

**(ARUN MONGA),J**