2023:APHC:19513

IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

*****

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

CIVIL MISCELLANEOUS APPEAL NO.329 OF 2022

Between:
Atheesh Sanka, S/o.Seshagiri Rao,
Hindu, Aged about 39 years,
Resident of D.No.2712, Copper Hill Drive,
Grand Rapids, Michigan-49525, U.S.A. ... Appellant

AND

Sanka (Mamidi) Lakshmi Renuka,
Wife of Atheesh Sanka, Hindu,
Aged about 33 years, Resident of
D.No.3-16B-140/1, Santhi Nagar,
Kakinada-3, East Godavari District. .. Respondent

DATE OF JUDGMENT PRONOUNCED: 20.06.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
THE HON'BLE SRI JUSTICE V.SRINIVAS

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No

3. Whether Their ladyship/Lordship wishes to see the fair copy of the Judgment? Yes/No

JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE V.SRINIVAS

* **HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**
&
HON'BLE SRI JUSTICE V.SRINIVAS

+ CIVIL MISCELLANEOUS APPEAL No.329 of 2022

% 20.06.2023
# Atheesh Sanka, S/o.Seshagiri Rao,
Hindu, Aged about 39 years,
Resident of D.No.2712, Copper Hill Drive,
Grand Rapids, Michigan-49525, U.S.A.
.. Appellant

Vs.

$ Sanka (Mamidi) Lakshmi Renuka,
Wife of Atheesh Sanka, Hindu,
Aged about 33 years, Resident of
D.No.3-16B-140/1, Santhi Nagar,
Kakinada-3, East Godavari District.
.. Respondent

! Counsel for the Appellant : Sri Sunkara Rajendra Prasad
Counsel for Respondent: Sri T.V.Jaggi Reddy

<Gist :

>Head Note:
? Cases referred:

1. 2019 (7) SCC 311
2. 1978 AIR (A.P.) 13
3. 2018 (3) ALT 284 (D.B.)
4. (2011) 104 AIC 244
5. (2015) 2 AD (SC) 530
6. (1993) AIR (Karnataka) 120
7. (2017) AIR (Kerala) 32
8. (1982) 2 SCC 544
9. (2019) 7 SCC 311
10. (2010) 1 SCC 174
11. (1973) 1 SCC 840

This Court made the following:

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

CIVIL MISCELLANEOUS APPEAL NO.329 OF 2022

JUDGMENT:*(per Hon'ble Sri Justice V.Srinivas)*

This Civil Miscellaneous Appeal is directed against the Order and decree dated 01.08.2022 passed by the IV Additional District Court, Kakinada in Guardian O.P.No.61 of 2019.

2. The appellant herein is the husband/respondent. For the sake of convenience, the parties herein are referred to as they are arrayed before the trial Court.

3. The respondent herein/wife filed a petition under Section 7 and 25 of Guardian and Wards Act and Section 6 of Hindu Minority and Guardianship Act, before the trial court against her husband/appellant herein, seeking custody of their minor child by name Akshaya.

4. The case of the respondent/wife herein in brief is as follows:

i. The marriage between the appellant and respondent took place as per Hindu rites and customs on

8-10-2009 in Hotel Iswarya Grand, Kakinada Immediately after their marriage, they started living at USA. The appellant started harassing her for additional dowry of Rs.1 crore and used to ill-treat her by beating, slapping, and abusing indiscriminately at the instance of his parents and forced her to resign her job and withdraw her working visa, on which the visa was converted to a 'dependent' visa. During her pregnancy, he caused mental torture and caused immense fear and insecurity for her life. Due to his intimidating behavior, her blood pressure reached uncontrollable, and he is not supported for her health care. He installed secret cameras preventing her privacy.

ii. She gave birth to a minor baby on 5-4-2018 and she was named Akshaya. Whenever she is asking about the baby's basic needs and doctor appointments, he gets wild and one occasion, he did not allow her to touch the baby and he would forcefully snatch the baby from her and another occasion, he pushed her away from the baby while himself and his father were drunk.

iii. On one occasion she went to the hospital leaving the baby with him, after she came back, she noticed that

her four months old baby was seen precariously hanging over his leg. On questioning, he abused her. He compelled and coerced her to co-operate for mutual divorce in USA, if failure he will harm the life of baby and put her to severe fear in this regard, on which he compelled to sign on divorce paper.

iv. The respondent made false promises that he is planning to travel to India for her and baby and stated that he is withdrawing divorce proposal, on which she was prepared to come to India. Butin the last minute,he informed that the baby's passport is not yet ready and asked her to leave alone for India and in two days he will come to India along with the baby. Believing his words, she came to India and waiting for them. Thereafter, she came to know that she was deceiving by him with false representations.

v. As she is on dependent visa came to India, she is unable to enter USA, as such she is not in a position even to go back to USA for the baby. She made all efforts to convince him, but he is adamant in that regard. She is living with her parents at Kakinada with a fond hope he will bring her baby to Kakinada. But the appellant

illegally and forcibly detained the minor away from her custody. The respondent has no right to detain or retain the minor forcibly in his illegal custody, as the minor is expected to reside with the mother where she ordinarily resides.

5. The appellant/husband herein denied the case by filing his counter and his case is as follows:

i. Hehas not taken any dowry from the respondent at the time of marriage and after the marriage or at any point of time, he never harassed her for the sake of money and never accessed any money from her accounts. The petitioner,with a view to harassinghim and squeeze money from him,and with evil moto filed this petition with false and untenable allegations.

ii. The petitioner and her parents asked him for divorce in month of July 2018, as she is not happy with the marriage, but he tried to convince her and her parents, but they did not heed his words, thus hefiled a divorce petition in USA court in the month of October 2018. In the process, the counselors conducting counseling by visiting their house on three occasions and tried to convince her, but in vain. They(counselors)

requested them to try to live without their parents' influence for atleast six months and asked them to attend marriage counseling. He attended counseling, as he is willing to withdraw the divorce. But she did not attend and left the minor child who is 8 months old with him by giving twelve hours prior notice. Then he continued the divorce petition filed by him.

iii. The attitude of the respondent is very dangerous, as she left the baby without any preparations and planning, she put the baby's health at high risk and lot of stress, the appellant/respondent able to step up and go beyond his limits and taken good care of minor child. Previously, she used to work full time before leaving to India, thereafter he made several changes in his lifestyle to see the care and welfare of the minor child. Further she created lot of inconvenience to him and child, as she changes their medical insurance likely to cancel during the peak flu season in US. Immediately he pursued the matter and reactivated their medical insurance. She repeatedly put the child at risk by making hasty and unreasonable decisions.

iv. Further, the minor child was born in USA, and she is a citizen of America and, she is now residing with him in the USA. He filed a petition in the USA court i.e., in 17thCircuit Court, the County of Kent (Family Division) in the State of Michigan, USA with case No.18-09176-DM,the said Court ordered for custody of minor child to the appellant vide order dt:8-3-2019. The minor child is growing healthily in his custody and the court at Michigan examined all the material aspects of the minor child and granted custody to him.

v. The trial Court at Kakinada has no jurisdiction to entertain the matter as the minor child is citizen of USA and she is living in USA, and she never visited India at any point of time. He has no objection to see the child and live with minor at USA by the petitioner. The authorities of America will not allow the minor child to travel to India without proper documents and verifications. If she wants any legal rights for the minor child, she must follow the procedure and law as per American laws. There is no cause of action in filing this petition.

6. During enquiry, the petitioner herein was examined as P.W.1 and got marked Ex.P.1. No oral and documentary

evidence was adduced on behalf of respondent/appellant herein.

7. The trial court framed the following points for consideration:

i).Whether the minor child is Citizen of USA ?

ii).Whether this Court has jurisdiction to entertain the matter ?

iii).Whether the orders of child custody, dt.08.03.2019 delivered by the Court of 17th Circuit Court for the Country of Kent Family Division in the State of Michigan is true, valid and binding on the petitioner ?

iv).Whether the petition is entitled for custody of minor child under Section 7 and 25 of Guardian and Wards Act and Section 6 of Hindu Minority and Guardianship Act ?

v).To what relief ?

8. On the material placed on the record, the trial Court allowed the petition by directing the appellant/husband, who is residing in USA, to handover the minor child to the petitioner/wife in India within the period of three months from the date of order and also directing him to take all necessary steps to shift the minor child from USA to India and a further direction given to the wife to allow the husband to see the minor child through Video-Call or WhatsApp call or Skype whenever

required by the husband and also permit him to see the minor child in India physically whenever he came to India once in ten days.

9. It is against the said order; the present appeal is preferred by the appellant/husband.

10. Heard Sri Sunkara Rajendra Prasad, learned Counsel for the appellant and Sri T.V.Jaggi Reddy, learned counsel for the respondent.

11. Sri Sunkara Rajendra Prasad, learned counsel for the appellant/husband, submits that the trial Court erred in granting the custody of the minor child to the respondent/wife, which is contrary to the principles of law; that the trial Court erred in observing that the place where the mother of the minor child ordinarily resides is having jurisdiction to entertain the application; that the minor child was born in USA on 05.04.2018 and thereby she became US Citizen and she has been residing at USA since her birth and she is under the exclusive care and custody of the appellant/husband since 06.12.2018; that the respondent herself gave up minor as wellher employment at USA and came to India voluntarily by abandoning the child on 06.12.2018; that the orders dated 08.03.2019 passed by the 17th Circuit Court, County of Kent

(Family Division), State of Michigan, USA granting custody of the minor child to the appellant are valid and same is binding on the respondent; that the trial Court failed to consider the welfare of the minor child and there is no need that a child below the age of 5 years shall be in the custody of mother alone. He relied upon judgments of Hon'ble Supreme Court and High Court reported in***Lahari Sakhamuri v. Sobhan Kodali***[1]***, Harihar Pershad Jaiswal v. Suresh Jaiswal***[2]and ***Sobhan Kodali, USA, Rep., by his G.P.A. Holder, Kodali Jaya Ramesh v. Lahari Sakhamuri***[3].

12. On the other hand, Sri T.V.Jaggi Reddy, learned counsel for the respondent/wife, submits thatthe trial Court on considering the facts and circumstances, material on record rightly granted the custody of the minor child to her mother; that there are no grounds to interfere with the order of the trial Court and that the appeal is liable to be dismissed. He relied upon judgments Hon'ble Supreme Court and High Courts reported in ***Ruchi Majoo v. Sanjeev Majoo***[4]***, Roxann Sharma***

[1]2019 (7) SCC 311
[2]1978 AIR (A.P.) 13
[3]2018 (3) ALT 284 (D.B.)
[4](2011) 104 AIC 244

***v. Arun Sharma*[5]*, K.C.Sashidhar v. Roopa*[6]and ***Salini v. Umasankaran*[7].

13. Now, after hearing both sides, the following points arise for determination:

1). Whether the minorchild by name Akshaya is a citizen of USA?

2). Whether the trial Court committed any error in arriving that it has jurisdiction to grant custody of the child Akshaya to the petitioner/mother?

3). Whether the order of trial Court is liable to be set aside, if so, to what extent with what relief?

14. POINT NO.1& 2:

Before determining the above points, for better appreciation, this Court is taking a reference to Sections 3 and 4 of the Citizenship Act, 1955, which are relevant as follows:

> 3. **Citizenship by birth**: Except as provided in sub-section (2) of this section, every person born in India on or after the 26th January, 1950, shall be a citizen of India by birth.
>
> (2) A person shall not be such a citizen by virtue of this section if at the time of his birth— (a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or (b) his father is an enemy alien and the

[5](2015) 2 AD (SC) 530
[6](1993) AIR (Karnataka) 120
[7](2017) AIR (Kerala) 32

birth occurs in a place then under occupation by the enemy. Citizenship by descent.

4. **Citizenship by descent:**(I) A person born outside India on or after the 26th January, 1950, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth: Provided that if the father of such a person was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless-

(a) his birth is registered at an Indian consulate within one year of its occurrenceor the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or (b) his father is, at the time of his birth, in service under a Government in India.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any male person born out of undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

15. Thus, here is a case of a baby born outside of India and Section 4 of the Citizenship Act speaks of a person born outside of India after 26th January 1950, his/her birth is to be registered at Indian Consulatewithin one year of its occurrence

etc. In the present case, admittedly no such registration was made by the petitioner/mother or the father/respondent. To get Indian Citizenship as per Section 4 of the Citizenship Act, parents should register the birth of their child at an Indian Consulate. Till such date the child by name Akshaya is citizen of USA as she born in that Country. In this connection, it is relevant to state some of the statements made by the mother of the child-petitioner, which were said to be elicited in the cross examination before the trial Court.

> "……I have not submitted my daughter's date of birth neither in Kakinada Municipality nor in Hyderabad Municipality for recognizing my daughter is an Indian Citizen. I have not filed any application or any other documents before the authorities in India for the purpose of declaration of my daughter Akshaya as Indian National or Citizen……. It is true American Visa is necessary document to my daughter to come to India from USA. I have no idea whether American Visa is required, or Indian Visa required to bring my daughter from USA. I have not applied in Government of India Offices or Authorities or USA Offices or Embassy to bring my daughter to India from USA. As per procedure and as per my knowledge, respondent and I have to give the consent in American Embassy for sending my daughter from USA to India. Since 06.12.2018 to till today I have not taken any steps in both the Governments to bring my daughter to India."

16. Thus, from the above statement, the petitioner has knowledge that she and her husband must give consent in the consulate to recognize her daughter Akshaya as Indian Citizen. More so, since date of her entry in India that is from 06.12.2018 till date, petitioner/mother has not taken any steps to Indian citizenship for Akshaya/minor ward. Even as per Rules Amended in CitizenshipAct 2003 on or after the commencement of the Citizenship (Amendment) Act, 2003, a person shall not be a citizen of India by virtue of this section, unless his/her birth is registered at an Indian consulate in such form and in such manner, as may be prescribed.....(*i*) within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 2003, or whichever is later. In this case, admittedly, no such application was registered for Citizenship of minor Akshaya in India.

17. Even Section 6 of the Hindu Minority and Guardianship Act, 1956 constitutes the father as the natural guardian of a minor son. But that provision cannot supersede the paramount consideration as to what is conducive to the welfare of the minor.The Hon'ble Apex Court in***Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka***[8], it was observed:

[8](1982) 2 SCC 544

"17. The principles of law in relation to the custody of a minor appear to be well established. It is well settled that any matter concerning a minor has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility, and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court must be guided by the only consideration of the welfare of the minor."

18. In ***Lahari Sakhamuri v. Sobhan Kodali***[9] by the Hon'ble Apex Court held at para 43,48,49and50 are relevant and which is as follows:

> 43.The expression "best interest of child" which is always kept being of paramount consideration is indeed wide in its connotation and it cannot remain the love and care of the primary care giver i.e. the mother in case of the infant or the child who is only a few years old. The definition of "best interest of the child" is envisaged in Section 2(9) of the Juvenile Justice (Care & Protection) Act, 2015, as to mean "the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development".
>
> 48**.** "It is true that this Court has to keep in mind the best interest of the child as the paramount consideration. The

[9](2019) 7 SCC 311

observations of the US court clearly show that principle of welfare of the children has been taken into consideration by the US court in passing of the order as it reiterates that both the parties are necessary for proper upbringing of the children and the ultimate decision of custody and guardianship of the two minor children will be taken by the US which has the exclusive jurisdiction to take the decision as the children happen to be US citizens and further order has been passed on the respondent's emergency petition with special release in custody on 9-3-2018 permitting the respondent (Sobhan Kodali) to apply for US passports on behalf of the minor children without the appellant (Lahari Sakhamuri) being mother's consent. The appellant (Lahari Sakhamuri) cannot disregard the proceedings instituted at her instance before the US court and she must participate in those proceedings by engaging solicitors of her choice to espouse her cause".

49. "The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (*1*) maturity and judgment; (*2*) mental stability; (*3*) ability to provide access to schools; (*4*) moral character; (*5*) ability to provide continuing involvement in the community; (*6*) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual".

50. While dealing with the younger tender year doctrine, *Janusz Korczar* a famous Polish-Jewish educator & children's author observed:

> "children cannot wait too long and they are not people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they are meant to be — the unknown person inside each of them is our hope for the future."

Child rights may be limited but they should not be ignored or eliminated since children are in fact persons wherein all fundamental rights are guaranteed to them keeping in mind the best interest of the child and the various other factors which play a pivotal role in taking decision to which reference has been made taking note of the parental autonomy which courts do not easily discard.

19. In this context, it is relevant to state the testimony of petitioner as P.W.1 in the cross examination elicited as follows:

> "It is true in America if any small incident taken place, the action of police is very fast and police officials elect the control the incident. It is true for comparing, the India and America Country, the standard of living, health conditions, welfare of child and education career of the child and other aspects is better in American Country than India."....."It is true I have not received any information from American Hospitals and American Government after 06.12.2018 to till date with regard to my daughter, was sick and taken the treatment or any other health condition of my daughter. It is true if anything untoward incident happened in family in America, the Government informed to the parents of the

> concerned when they are in USA." ....."I never sent mail to my husband to made requests to send my daughter to India at any point of time."

20. Thus, the above testimony clearly indicates the welfare of the minor Akshaya is better in America than in India. This fact is also known to P.W.1/Petitioner. Even otherwise, the County Court Family Division has already given custody of child to the respondent/father and that as the minor child is a citizen of USA, the ultimate decision of custody and guardianship of the minor child will be taken by the US Court which has the exclusive jurisdiction to take the decision as the child happen to be US citizen.

21. So far as jurisdiction is concerned, jurisdiction is not attracted by the operation or creation of fortuitous circumstances such as the circumstance as to where the child, whose custody is in issue, is brought or for the time being lodged. In matters relating to matrimony and custody, the law of that place must govern which has the closest connection with the well-being of the spouses and the welfare of the offspring's of marriage.

22. In ***Lahari Sakhamuri*** Case (**referred to supra**), wherein it was held that: "This Court once again reiterated the principles of the closest concern, most intimate contact with the issues

arising in the case, natural habitat of the minor child, best interest of the child and comity of courts."

23. In **V. Ravi Chandran (2) v. Union of India**[10], wherein it was held that: "*29*. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the court where the parties had set up their matrimonial home, the court in the country to which the child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a court in his own country. Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and

[10](2010) 1 SCC 174

persuasive effect of a foreign judgment must depend on the circumstances of each case."

24. The law on the question of jurisdiction of a court to entertain an application for custody of a child is specifically incorporated in Section 9 the Guardians and Wards Act, 1890 (for short 'the Act'). The relevant provisions are extracted herein below for easy reference: - Section 9 speaks that "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."

25. The meaning of the word 'ordinarily resides' signifies dwelling in a place continuously for a certain period. There must be a certain degree of permanence in the residence. Therefore, ordinary residence is something more than a temporary residence and it can be the ordinary residence of the parents in a case of they are residing together or of the parents as well in a situation when both parents are living apart. The Apex Court in ***Rosy Jacob* v. *Jacob Chakramakkal***[11] held that the controlling consideration governing the custody of the children is the welfare of the children and not the right of the parents.

[11](1973) 1 SCC 840

26. Herein the present case, the child Akshaya was born in USA and till date she is staying in USA and as per counter of the respondent in the month of October 2018, the respondent filed divorce application and that the marriage counselors have conducted counseling by visiting the house of petitioner and respondent in USA in the month of October, November and December, 2018. They tried to convince the petitioner, but in vain. Thereafter, without any intimation or information the petitioner came down to India by leaving minor Akshaya in USA itself. The same was not denied by the petitioner before the trial Court. But she has given her own reasons for coming down to India. Whatever the reasons, the minor Askhaya was in USA and even now she is residing in USA.

27. Unless and until, both the parents of minor Askhaya jointly filed registration before Indian Consulate, minor Akshaya cannot be an Indian Citizen.

28. Admittedly, respondent obtained child custody from 17th Circuit Court for the County of Kent Family Division, in the State of Michigan, USA on 08.03.2019 and that, order is placed on record. No contra document is placed to disbelieve the same. Admittedly, the original application in this appeal filed before Rajamahendravaram District Court, subsequently transferred to

IV Additional District Court, Kakinada on 25.07.2018. Thus, it shows the impugned order in question is passed after the order dated 08.03.2019 from County of Kent (Family Division) Michigan, USA.

29. Admittedly, the minor Akshaya was born in USA,and she is a citizen of USA. She is now residing with her father/respondent in USA. The Hon'ble Court at Michigan ordered for custody of minor child to the respondent in its order dated 08.03.2019. The petitioner failed to explain to this Court how the Court in India is having jurisdiction to decide the issue.

30. Even otherwise, the Hon'ble Supreme Court says in Jeewanti v. Kishan held "that the word 'resides' must mean the actual place of residence and not a legal or constructive residence, it certainly did not connote the place of origin." Besides, it is settled law that petitioner should prove that the minor's actual place of residence at the time of application under Section 9 of the Guardian and Wards Act. It is also keep in mind that as per Section 25 of the Guardian and Wards Act also defines the Court which has been statutorily defined in Section 4(5)(a) to mean the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian. It is also kept in mind

that if there are two places where it could be held that minor was ordinarily residing, the question would be one of convenience because legislative test to be fulfilled and the question however cannot be decided on presumptive, legal or constructive custody but by ordinary residence of the minor.

31. In the present case, the minor has been living with her father since birth. Thereby, the Court in USA is having jurisdiction and the minor Akshaya is citizen of USA. The requirement of Section 9 of G & W Act is that for an application with respect to Guardianship to be maintainable before the District Court, the prerequisite is that the minor must "ordinarily" reside within the jurisdiction of the said Court.

32. Thus, for the above reasons, this Court decides that the minor child by name Akshaya is a citizen of USA and the trial Court has committed an error in concluding that it has jurisdiction to grant custody of the child Akshaya to the petitioner/mother. It is clear that the Court at Kakinada has no jurisdiction.

33. <u>POINT NO.3:</u>

In view of the findings in Point Nos.1 and 2, the order of the trial Court is liable to be set aside and this appeal is to be allowed.

34. Accordingly, the Civil Miscellaneous Appeal is hereby allowed by setting aside the order dated 01.08.2022, in Guardian O.P.No.61 of 2019 on the file of IV Additional District Judge, Kakinada. No order as to costs.

35. Interim orders granted earlier if any, stand vacated.

36. Miscellaneous petitions pending if any, stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE V.SRINIVAS

Date: 20.06.2023
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L.R. copy to be marked

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

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CIVIL MISCELLANEOUS APPEAL NO.329 OF 2022

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