
(2001) 01 AP CK 0069
In the Andhra Pradesh High Court
Case No : CRP No. 1770 of 1998

A. Mannan Khan	Vs	APPELLANT
Judge and Family Court, Hyd., A.P. and another		RESPONDENT

Date of Decision : 19-01-2001

Acts Referred:

Constitution of India, 1950 — Article 227
Family Courts Act, 1984 — Section 7(1)

Citation : AIR 2001 AP 163 : (2001) 2 ALD 264 : (2001) 2 ALD 190 : (2001) 1 ALT 607 : (2001) 1 APLJ 109 : (2001) 2 DMC 250 : (2001) 2 RCR(Civil) 470

Hon'ble Judges : G. Bikshapathy, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. Mohd. Zia-Ul-Haque, for the Appellant; Mr. K. Mahipathi Rao, for the Respondent

Judgement

B. Subhashan Reddy, J.—This revision under Article 227 of the Constitution of India raises a jurisdictional point regarding the maintainability of OS No.100 of 1997 on the file of the Family Court, Hyderabad.

2. Mr. Mohd. Zia-Ul-Haque, the learned Counsel for the petitioner, submits that the petitioner was the husband of the 2nd respondent, but the marriage between them was dissolved on 12-2-1997. After the 2nd respondent ceased to be the wife of the petitioner, she had instituted the above suit on the file of the 1st respondent-Family Court in respect of the suit schedule house on the premise that she is the absolute owner and exclusive possessor of the same and that the petitioner has got no right, title or interest over the same.

3. The suit schedule house was the matrimonial home where both the petitioner and the 2nd respondent resided and since the dissolution of the marriage, a dispute has ensued inter se the parties, each party is claiming that it has got title and possession in the property in question.

4. Mr. Mohd. Zia-Ul-Haque, further submits that the Family Court had erred in

entertaining the said suit for the reason that the moment there was a dissolution of marriage between the parties, there was a severance of matrimonial relationship of husband and wife and now that the status of the 2nd respondent is ex-wife and as such, only common law Court has got jurisdiction and that the Family Court has got no jurisdiction. He draws our attention to Explanation to Section 7 of the Family Courts Act, 1984, which reads:

"Jurisdiction :--(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any District Court or any Subordinate Civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation: and

(b)

Explanation:--The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a)

(b)

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them."

5. Mr. Mohd. Zia-Ul-Haque, the learned Counsel for the petitioner, stresses on the words "parties to a marriage" and seeks interpretation from this Court that the said words are used in present tense and are not applicable to ex-spouses.

6. Mr. K. Mahipathi Rao, the learned Counsel appearing for the 2nd respondent, submits that the said words cannot be used only as in present tense, but they symbolise the status of the parties even before the dissolution of the marriage.

7. Indisputably, the suit schedule property, which was the matrimonial home of both the parties herein, is in dispute and merely because there is a severance of relationship of husband and wife between the parties, it cannot be said that they were not parties to the marriage. The words "parties to a marriage" have to be construed as divorced spouses also and not, only the parties whose marriage is subsisting.

8. In view of what is stated supra, we hold that the Family Court, Hyderabad had validly entertained the suit. Accordingly, this Civil Revision Petition is dismissed. No costs.