

(2014) 02 GUJ CK 0031
In the Gujarat High Court
Case No : First Appeal No. 1819 of 2013

Amitbhai Hirabhai Vadodariya

APPELLANT

Vs

Pinalben Prafulbhai Mehta

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Bombay Civil Courts Act, 1869 — Section 13, 16, 24, 25, 26
Bombay Court Fees Act, 1959 — Section 6(iv)(j)
Civil Procedure Code, 1908 (CPC) — Section 96(1)
Gujarat Civil Courts Act, 2005 — Section 12, 14, 15, 28, 3
Hindu Marriage Act, 1955 — Section 13, 13(1)(ia), 19, 28, 28(1)
Succession Act, 1925 — Section 290, 299
Suits Valuation Act, 1887 — Section 4, 9

Citation : (2014) 2 GLR 1541

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : M.B. Parikh, Advocate for the Appellant; P.J. Kanabar and Bhaumik Dholariya, Advocate for the Respondent

Judgement

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Harsha Devani, J.—This appeal under Sec. 28(1) of the Hindu Marriage Act, 1955 (hereinafter referred to as "the Act") is directed against the judgment and order dated 15th April, 2013 passed by the learned Principal Senior Civil Judge, Amreli in Hindu Marriage Petition No. 40 of 2008, whereby the divorce petition filed by the appellant under Sec. 13(1)(i-a) of the Act has been dismissed. When the matter was taken up for hearing, Mr. P.J. Kanabar, learned Advocate for the respondent raised a preliminary objection to the effect that the order dismissing the petition for divorce under Sec. 13(1)(i-a) of the Act has been passed by the learned Principal Senior Civil Judge, Amreli and that an appeal from such an order of the Principal Senior Civil Judge would lie to the District Judge of Amreli, and not to the High Court. Since the contention raised by Mr. Kanabar relates to the question of jurisdiction, the same was heard as a preliminary issue, without going into the merits of the matter.

2. Mr. P.J. Kanabar, learned Counsel for the respondent submitted that in the petition for divorce filed by the respondent under Sec. 13(1)(i-a) of the Act, fixed Court-fees of Rs. 50/- had been paid. Referring to the provisions of Sec. 28 of the Act, it was submitted that the same provides that all decrees made by the Court in any proceeding under the Act shall, subject to the provisions of sub-sec. (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decision of the Court given in the exercise of its original civil jurisdiction. It was submitted that sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act, 2005 lays down that appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to the Court of the District Judge of the district when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time, specify and in other cases to the High Court. Thus, under sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act, appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall would lie either before the Court of the District Judge of the district or to the High Court, depending on the value of the subject-matter. Since Sec. 28 of the Act provides for appeal to the Court to which appeals ordinarily lie from the decision of the Court given in the exercise of its original civil jurisdiction, on a combined reading of Sec. 28 of the Act with Sec. 15 of the Gujarat Civil Courts Act, it is clear that in case where the valuation of the suit is less than five lakhs of rupees, an appeal against the decree and order passed by a Court of Senior Civil Judge would lie before the Court of District Judge and not before the High Court.

2.1. In support of his submissions, the learned Counsel placed reliance upon the following decisions of this Court:

- (i) Ramjibhai Lalbhai Patel Vs. Shantaben,
- (ii) Nanduben Jivanavala v. State of Gujarat, 2005 (2) GLH (UJ) 16
- (iii) Maniben Vs. Gopalbhai Punjabhai Dhanka,
- (iv) Uttamlal Jethalal Shah v. Baluchand Tarachand, 1972 GLR 452
- (v) Bharatbhai H. Rawal Vs. Jyotsanaben,
- (vi) Dilipsinh Devubha Zala Vs. Kishorbhai Ranchhodbhai Thummar and Others,

3. On the other hand, Mr. Minesh Parikh, learned Advocate for the appellant emphatically submitted that the preliminary contention raised on behalf of the respondent is misconceived and that an appeal under Sec. 28 of the Act would lie to the High Court and as such, the present appeal is maintainable. The attention of the Court was invited to the provisions of Sec. 15 of the Gujarat Civil Courts Act to submit that sub-sec. (2) thereof provides that appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and

proceedings of civil nature shall, when such appeals are allowed by law, lie to the Court of District Judge of the district when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees. It was submitted, that thus, insofar as the provision for appeal before the District Court is concerned, the same is dependent upon the valuation of the suit or civil proceedings. However, in view of clause (b) of sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act, in respect of judgments and decrees passed in all proceedings where the valuation is above five lakhs of rupees and where the subject-matter of the suit is not capable of valuation, appeals would lie to the High Court. According to the learned Counsel, if the provision is read in any other manner, clause (b) of sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act would be rendered redundant.

3.1. Next, it was submitted that clause (a) of sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act talks of the pecuniary jurisdiction of the trial Court. The present case which relates to a petition for divorce is, therefore, not capable of valuation and hence clause (a) of sub-sec. (2) would have no applicability in the facts of the present case. In support of his submissions, the learned Counsel placed reliance upon the decision of the Supreme Court in the case of Ravi Kumar Vs. Julmi Devi, , wherein the Court had held that it cannot be disputed that while exercising its power under Sec. 28 of the Act, the High Court, as the first Court of appeal is both a Court of law and also of facts. It was submitted that, therefore, insofar as Sec. 28 of the Act is concerned, it is the High Court which is the first Court of Appeal and not the Court of the District Judge.

3.2. Attention was also invited to Sec. 19 of the Act, which provides for the Court to which the petition shall be presented, to submit that the said Section mandates that every petition under the Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction, the marriage was solemnised, or the respondent, at the time of the presentation of the petition resided, etc. It was pointed out that "District Court" has been defined under clause (b) of Sec. 3 of the Act, to mean in any area for which there is a City Civil Court, that Court, and in any other area the Principal Civil Court of original jurisdiction, and includes any other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in the Act. It was submitted that as a necessary corollary, therefore, the Court of the Principal Senior Civil Judge having jurisdiction in respect of the matters dealt with in the Hindu Marriage Act is a District Court within the meaning of the said expression as defined in Sec. 3(b) of the Act and consequently, an appeal from an order or decree of such Court must lie to the High Court. Under the definition given in clause (b) of Sec. 3 of the Act, "District Court" means the principal Civil Court of original jurisdiction in any given area; thus in areas where there is a City Civil Court, it is that Court and in any other area it is the District Court as understood under the Civil Procedure Code, as also under the Gujarat Civil Courts Act. By reason of the inclusive part of the definition in Sec. 3(b), an inferior Civil Court when notified

by the State Government as having jurisdiction in respect of matters dealt with in the Act comes to be included within the meaning of the term "District Court" as defined by the earlier part of the definition. Therefore, when a Court of the Senior Civil Judge having jurisdiction under the Hindu Marriage Act, decides a petition for judicial separation or divorce, its decree must be regarded as that of a District Court, i.e. of a Principal Civil Court of original jurisdiction in the district, and since under the Gujarat Civil Courts Act, the appeal from the District Court, which is the Principal Civil Court of original jurisdiction, lies to the High Court, the appeal from the Court of Senior Civil Judge must also lie to the High Court.

3.3. Reliance was placed upon the decision of the Punjab and Haryana High Court in the case of *S. Kalyan Singh Vs. Sh. Tej Kaur*, wherein the Court has held that an appeal from an order passed by a Subordinate Judge, who is empowered by a notification issued under Sec. 3(b) of the Hindu Marriage Act to entertain applications under the Act, lies to the High Court and not to the Court of the District Judge. It was, accordingly, submitted that the present appeal against the judgment and decree passed by the Principal Senior Civil Judge has rightly been filed before the High Court and that the objection regarding the maintainability of the appeal deserves to be rejected.

3.4. Mr. Parikh also submitted that in revenue matters there are a catena of decisions of this Court to the effect that where the powers of the Collector have been delegated to the Deputy Collector or the Mamlatdar under the revenue enactments, an appeal or revision would not lie before the Collector in view of the fact that the Mamlatdar or the Deputy Collector exercised the powers of the Collector under such enactment. It was submitted that analogously in the present case also, since the learned Principal Senior Civil Judge having jurisdiction under the Hindu Marriage Act decided the divorce petition, he exercised powers of the District Court, and as such the appeal would not lie before the District Judge and would lie before the High Court. It was contended that the decision of the Principal Senior Civil Judge acting as a District Court would be equivalent to the decision of a District Judge, and hence, the District Judge would be incompetent to decide an appeal against the order passed by the Principal Senior Civil Judge in exercise of powers under Sec. 28 of the Act.

4. Before adverting to the merits of the case, reference may be made to the relevant statutory provisions. Section 19 of the Hindu Marriage Act provides for the forum before which petitions under the Act are to be presented and reads as under:

"19. Court to which petition shall be presented:-Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

(i) the marriage was solemnised, or

(ii) the respondent, at the time of the presentation of the petition, resides, or

(iii) the parties to the marriage last resided together, or

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive."

5. Section 3(b) of the Act defines "District Court" to mean in any area for which there is a City Civil Court, that Court, and in any other area the Principal Civil Court of original jurisdiction, and includes any other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in the Act.

6. Section 28 of the Act, under which the present appeal has been filed reads thus:

"28. Appeals from decrees and orders:-(1) All decrees made by the Court in any proceedings under this Act shall, subject to the provisions of sub-sec. (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

(2) Orders made by the Court in any proceeding under this Act under Sec. 25 or Sec. 26 shall, subject to the provisions of sub-sec. (3), be appealable if they are not interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this Section on the subject of costs only.

(4) Every appeal under this Section shall be preferred within a period of ninety days from the date of the decree or order."

Thus, under sub-sec. (1) of Sec. 28 of the Act, every appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction.

7. At this juncture, reference may be made to the decision of this Court in the case of Ramjibhai Lalbhai Patel v. Smt. Shantaben D/o. Manilal Jashkanbhai Patel (supra), wherein the Court while construing the provisions of Sec. 28 of the Act, has held that under Sec. 28(1), the appeal lies to the Court to which appeals ordinarily lie from the decision of the Court given in the exercise of its original civil jurisdiction. The forum of appeal is prescribed under Sec. 16 of the Bombay Civil Courts Act, and therefore, for determining the forum of appeal, reference must be made to Sec. 28 of the Hindu Marriage Act, 1955 read with Sec. 16 of

the Bombay Civil Courts Act, 1869 and that the forum would not be determined by the definition of "District Court" under Sec. 3(b) of the Hindu Marriage Act, 1955. The Court placed reliance upon the pre-bifurcation binding decision of the Bombay High Court in the case of Gangadhar Rakhamaji Vs. Manjulal Gangadhar, wherein the said question had been considered fully. The Division Bench after considering the submissions placed before it that the Court of the Civil Judge (Senior Division) was a District Court under the definition of the "District Court" as given in Sec. 3(b) of the Hindu Marriage Act, 1955 and that the appeal would lie directly to the High Court, negated such submission. The Division Bench held that the Court of Civil Judge, Senior Division, which is notified by the State Government as having jurisdiction in matters dealt with under the Hindu Marriage Act, is a "District Court" within the definition of Sec. 3(b) of the Hindu Marriage Act, but it is not the Principal Civil Court of original jurisdiction, nor does it exercise its jurisdiction as such Principal Civil Court of original jurisdiction. Section 28 of the Hindu Marriage Act leaves the forum of appeal to be determined under the law for the time being in force, which in the said case, was the Bombay Civil Courts Act. The Court held that the forum of appeal from the order or decree of the Court of the Civil Judge, Senior Division, under the Bombay Civil Courts Act is the Court of the District Judge of the district and accordingly held that against the decision of the Civil Judge, Senior Division, the appeal lies to the Court of the District Judge and not to the High Court.

8. Subsequently, the Bombay Civil Courts Act, 1869 in its application to the State of Gujarat has been repealed by the Gujarat Civil Courts Act, 2005 and consequently the forum of appeal as provided under Sec. 28 of the Act would be governed by the provisions of the said Act. Section 15 of the Gujarat Civil Courts Act makes provision for "Appeals". Sub-section (1) thereof provides that appeals from the decrees and orders passed by a Court of District Judge in original suits and proceedings of civil nature shall, when such appeal is allowed by law, lie to the High Court. Sub-section (2) thereof provides that the appeals from the decrees and orders passed by a Court of Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie - (a) to the Court of District Judge of the district when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court may, from time to time, specify; and (b) to the High Court in other cases. Thus, under Sec. 15 of the Gujarat Civil Courts Act the jurisdiction to entertain an appeal against a decree and order passed by a Senior Civil Judge depends on whether the subject-matter of the original suit was less than five lakhs of rupees or more than five lakh rupees. If it is less than five lakh rupees appeal lies to the Court of the District Judge and in other cases to the High Court.

9. It may be noted that the decision of the Bombay High Court in the case of Gangadhar Rakhamaji v. Manjula Gangadhar (supra) was rendered in the context of the original Sec. 28 of the Hindu Marriage Act, which was as follows:

"All decrees and orders made by the Court in any proceeding under the Act shall be enforced in like manner as the decrees and orders of the Court made in the exercise of its original jurisdiction are enforced, and may be appealed from under any law for the time being in force."

Section 28 has been subsequently amended and at present, the same provides that all decrees made by the Court in any proceeding under the Act shall, subject to the provisions of sub-sec. (3), be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decision of the Court given in the exercise of its original civil jurisdiction. Thus, the old provision provided for an appeal under any law for the time being in force, whereas the present Sec. 28 provides that the appeal shall lie to the Court to which the appeals ordinarily lie from the decision of the Court given in the exercise of its original civil jurisdiction. In both the cases, ultimately the forum had been provided, at the relevant time under the Bombay Civil Courts Act and at present, under the Gujarat Civil Courts Act.

10. A contention has been raised before this Court that in view of clause (b) of the sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act, in all cases where the subject-matter of the original suit is not capable of valuation, the appeal would lie to the High Court and not the District Court and that since a petition for divorce is not capable of valuation, the present appeal has rightly been filed before this Court. In this regard it may be noted that on the question of valuation of a suit, this Court in the above decision in case of *Ramjibhai Lalbhai Patel v. Smt. Shantaben D/o. Manilal Jashkanbhai Patel* (supra), placed reliance upon a decision of the Division Bench of this Court in the case of *Chhagan Karsan v. Bhagwanji Punja*, 1972 GLR 835, wherein it was observed that having regard to the provisions of the Bombay Civil Courts Act, so far as valuation for the purpose of jurisdiction is concerned, there is no such thing as subject-matter being incapable of monetary evaluation. As in every case, whatever be the nature of the suit, the subject-matter has to be valued in terms of money for the purpose of jurisdiction. A short reference was made to the scheme of the Bombay Civil Courts Act and in the light of the provisions of that Act, it was observed that if the subject-matter of the suit or proceeding does not exceed in amount or value Rs. 10,000/-, the Civil Judge, Junior Division, would have jurisdiction to try and dispose of the suit or proceedings and on other hand, if the subject-matter of proceedings exceeds in amount or value Rs. 10,000/-, the Civil Judge, Junior Division would have no jurisdiction and the suit or proceedings would be triable only by the Civil Judge (Senior Division). The difficulty would arise where the subject-matter of the suit or proceedings is not capable of monetary evaluation. In the background of the framework of the constitution of the Court of the Civil Judge (Senior Division) and the Court of the Civil Judge (Junior Division), the Division Bench considered the question as to what would happen if the subject-matter of the suit or proceedings is not susceptible to monetary evaluation. The Division Bench held that in view of the third Paragraph of Secs. 24 and 25 of the

Bombay Civil Courts Act, all suits and proceedings of civil nature are divisible only into two classes, one class of those where the subject-matter does not exceed in amount or value ten thousand rupees and the other, of those where the subject-matter exceeds in amount or value ten thousand rupees. The reason is that in every suit or proceeding of a civil nature, the subject-matter has to be valued in terms of money for the purpose of jurisdiction. So far as the valuation for the purpose of jurisdiction is concerned, there has to be an evaluation of the subject-matter. The Suits Valuation Act, 1887 lays down the principle for valuation of the subject-matter of a suit for the purpose of jurisdiction. But there may be suits where the subject-matter may not be capable of being satisfactorily valued in terms of money and no rules having been made by the High Court under Sec. 9, no guidance may be furnished by the Suits Valuation Act, 1887, as to how the subject-matter of such a suit should be valued. The Court observed that it is now well settled that in such cases, the plaintiff may put his own valuation on the subject and such valuation may be accepted by the Court as prima facie true unless the Court is satisfied that it is defective on account of some improper motive in which case, the Court would always consider what should be regarded to be the proper value. The Court held that the provisions of Sec. 6(iv)(j) of the Bombay Court-fees Act, 1959 and Sec. 4 of the Suits Valuation Act, 1887, read together clearly contemplate that even in a suit in which the subject-matter in dispute is not susceptible of monetary evaluation the plaintiff may put his own valuation on the relief sought in the suit for the purposes of jurisdiction. It is, therefore, not possible to contemplate a case where there would be no valuation of the subject-matter of a suit or proceeding for the purpose of jurisdiction. There would always be a valuation of the subject-matter for the purpose of jurisdiction even in a case where the subject-matter is of such a nature that it is ordinarily not capable of being satisfactorily valued in terms of money. The concept of subject-matter being incapable of monetary evaluation is a total stranger when one is considering the valuation of the subject-matter for the purpose of jurisdiction. Since, there would always be valuation of the subject-matter for the purpose of jurisdiction, every suit or proceeding would necessarily fall within one or the other of the two provisions, namely, the third Paragraph of Secs. 24 or 25. No category of suits would be left out of the purview of either of these two provisions. Even if the subject-matter of the suit or proceeding is not susceptible of monetary evaluation, it can and must be valued by the plaintiff for the purpose of jurisdiction and the jurisdiction of the Court would be governed by the valuation put by the plaintiff, subject of course to correction by the Court in case of defective valuation due to improper motive. If such valuation does not exceed ten thousand rupees, the suit or proceeding would be within the jurisdiction of the Civil Judge (Junior Division): if it exceeds ten thousand rupees, the suit or proceeding would come within the special jurisdiction of the Civil Judge (Senior Division).

10.1. In the facts of the said case, the Court took note of the fact that the original petition has been decided by the Extra Assistant Judge, Narol. That Sec.

16 of the Bombay Civil Courts Act, 1869 provides that Assistant Judge's decrees and orders in such cases are appealable, and that the appeal shall lie to the District Judge or to the High Court based on whether the amount or value of the subject-matter does not exceed or exceeds twenty thousand rupees. Since the appellant therein did not put his valuation in the petition for the purpose of jurisdiction, the Court held that it was bound to follow the effect of the judgment of the Division Bench in Chhagan Karsan's case (*supra*) and upheld the objection raised by the respondent about the want of jurisdiction of the Court to hear the appeal. The Court, accordingly, held that the appeal filed in that suit was not sustainable for want of jurisdiction, and therefore, directed that the appeal memo and the papers with it be returned to the appellant therein for presentation to the proper forum.

11. At this stage, a brief reference may be made to the establishment and constitution of Civil Courts under the Gujarat Civil Courts Act, 2005. Section 3 thereof provides for the classes of Civil Courts and lays down that in addition to the Courts established under any other law for the time being in force, there shall be following classes of Civil Courts in the State, namely, (a) Court of a District Judge, (b) Court of a Senior Civil Judge and (c) Court of a Civil Judge. Establishment of Courts of District Judges is provided under Sec. 4 of the said Act. Clause (ii) of sub-sec. (3) of Sec. 3 provides for appointment of Additional District Judges who would exercise all powers of the Court of a District Judge. Section 5 thereof provides for establishment of Courts of Senior Civil Judge and Sec. 6 provides for establishment of Courts of Civil Judge. By virtue of sub-sec. (2) of Sec. 9, the Courts of Civil Judge (Senior Division), existing immediately prior to the appointed date shall, with effect from the appointed date, be deemed to be Courts of Senior Civil Judge established under the Act. A similar provision is made whereby the Courts of Civil Judge (Junior Division) are deemed to be Courts of Civil Judge established under the Act. Section 12 of the said Act provides for jurisdiction of a Court of District Judge and lays down that a Court of a District Judge shall be the principal Civil Court of original jurisdiction within the local limits of its jurisdiction. Section 13 provides for the jurisdiction of the Court of a Senior Civil Judge. Section 14 of the Gujarat Civil Courts Act which provides for the jurisdiction of a Court of Civil Judge postulates that the jurisdiction of a Court or Civil Judge shall extend to all original suits and proceedings of a civil nature, not otherwise excluded from the jurisdiction of a Court of a Civil Judge by any other law, the value of the subject-matter of which does not exceed two lakh rupees or such other sum as the High Court may, from time to time specify. Thus, the pecuniary jurisdiction of the Court of Civil Judge is limited to suits the subject-matter of which does not exceed two lakh rupees. Sub-section (2) of Sec. 15 provides that appeals from the decrees and orders passed by a Court of a Senior Civil Judge in original suits and proceedings of civil nature shall, when such appeals are allowed by law, lie to - (a) the Court of District Judge of the district when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees or such other sum as the High Court

may, from time to time, specify, and (b) to the High Court in other cases. Thus, sub-sec. (2) of Sec. 15 of the Act clearly provides that an appeal against a decree and order passed by a Court of Senior Civil Judge would lie to the Court of the District Judge of the district when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees, and in other cases, to the High Court.

12. In *Kamuben Bhimabhai Vs. Lakhabhai Vithalbhai*, a similar contention as regards the jurisdiction of the Court to entertain an appeal under Sec. 28 of the Hindu Marriage Act had been raised, wherein this Court following the decision of the Bombay High Court in the case of *Gangadhar Rakhamaji v. Manjula Gangadhar* (supra), disapproved the said argument advanced before it, namely, that the Court of the Assistant Judge is a "District Court" within the meaning of Sec. 3(b) of the Hindu Marriage Act.

13. The facts of the present case may be examined in the light of the above decisions. The above decisions of this Court had been rendered in the context of the provisions of Sec. 16 of the Bombay Civil Courts Act, 1869 and other relevant provisions, whereas in the facts of the present case, we are concerned with the provisions of Sec. 15 of the Gujarat Civil Courts Act, 2005 and other relevant provisions under the said Act. Section 16 of the Bombay Civil Courts Act, 1869 provided for the original jurisdiction of Assistant Judge and laid down that the District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter is of any amount or value, applications or references under special Acts, and miscellaneous applications. The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications or references. Where the Assistant Judge's decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceed fifty thousand rupees.

13.1. Thus, under Sec. 16 of the Bombay Civil Courts Act, appeals against the decrees and orders of the Assistant Judge lay to the District Judge or to the High Court depending upon the amount or value of the subject-matter, viz., if the same exceeded fifty thousand rupees, the appeal would lie before the High Court, and if the same was less than fifty thousand rupees, the appeal would lie before the District Judge. Section 15 of the Gujarat Civil Courts Act is more or less in pari materia with Sec. 16 of the Bombay Civil Courts Act, except that the designation Assistant Judge has been changed to Senior Civil Judge and the pecuniary jurisdiction has been increased to five lakhs of rupees instead of fifty thousand rupees. Under Sec. 15 of the Gujarat Civil Courts Act, appeals against the orders of the Court of the Senior Civil Judge would lie to the Court of the District Judge if the subject-matter of the original suit is less than five lakhs of rupees and in other cases to the High Court.

14. At this stage it may be pertinent to refer to the decision of a Division Bench of this Court in *Uttamlal Jethalal Shah v. Baluchand Tarachand* (supra), wherein,

in the context of Sec. 299 of the Succession Act, it was held thus:

"3. xxx xxx xxx

Section 299:-Every order made by a District Judge by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals.

Section 299 of the Act thus confers a right of appeal against the decision in the probate proceedings given by the trial Court. The Section obviously deals with appeals from original decrees and it impliedly recognises that there may be cases in which the appeal from the original decree will not lie to the High Court. The Section provides that the appeal lies to the High Court in accordance with the provisions of the Code of Civil Procedure, 1908, applicable to appeals. Section 96(1) of Civil Procedure Code, 1908 provides:

Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

Thus, an appeal from a decree passed by the Court exercising original jurisdiction will lie to the Court authorised to hear appeals from the decision of such Court. Section 16 of the Bombay Civil Courts Act, 1869, provides the forum to which an appeal shall lie. Paragraph 3 of Sec. 16 of the said Act provides:

Where the Assistant Judges' decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds ten thousand rupees.

Paragraph 1 provides:

The District Judge may refer to any Assistant Judge subordinate to him original suits of which the subject-matter does not amount to fifteen thousand rupees in amount or value applications or references under special Acts, and miscellaneous applications.

Paragraph 2 provides:

The Assistant Judge shall have jurisdiction to try such suits and to dispose of such applications or references.

Thus, by virtue of the provisions contained in Sec. 16 of the said Act, the District Judge may refer an application under a special Act to the Assistant Judge and such Assistant Judge shall have jurisdiction to try such applications. In cases where the Assistant Judges' orders are appealable, the appeal is provided to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds Rs. 10,000/-. It is clear from these

provisions in Sec. 16 of the said Act that the valuation of the subject-matter will govern the forum of appeal. A clear distinction has to be made between the right to appeal and the forum of appeal. The right of appeal is provided by substantial law and in the instant case, such right is provided by Sec. 290 of the Act. The forum is provided by the procedural law and the relevant provision is to be found in Paragraph 3 of Sec. 16 of the Bombay Civil Courts Act. It would follow that the appeal in the instant case lies not to the High Court but to the District Court as the subject-matter of the appeal admittedly does not exceed Rs. 10,000/-.

(4) xxx xxx In our considered opinion, the forum of appeal will be governed by the procedural law and Sec. 16, Paragraph 3 of the Bombay Civil Courts Act, 1869, will decide the forum. The appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds Rs. 10,000/-."

15. Thus, though Sec. 299 of the Succession Act, 1925 only provides for appeal to the High Court in accordance with the provisions of the Civil Procedure Code from the orders made by the District Judge, this Court has read the Section to mean that where the order is made by an Assistant Judge, the appeal would lie to the District Judge. Insofar as Sec. 15 of the Gujarat Civil Courts Act is concerned, the same clearly provides that the appeal would lie to the Court of the District Judge or to the High Court depending upon the amount or value of the subject-matter of the original suit.

16. Another aspect which may be noted is that under Sec. 15 of the Gujarat Civil Courts Act, the forum of appeal is the Court of the District Judge and not the District Court. Thus, there is a clear distinction between a "District Court" as defined under Sec. 3(b) of the Act and a "District Judge" as envisaged under Sec. 4 of the Gujarat Civil Courts Act. The expression "District Court" as defined under Sec. 3(b) of the Act is an inclusive one and also includes the Civil Court and the Principal Civil Court of original jurisdiction when notified by the Government. Therefore, though the Court of the Principal Senior Civil Judge which is notified by the State Government as having jurisdiction in matters dealt with under the Hindu Marriage Act, is a "District Court" within the meaning of the said expression as defined under Sec. 3(b) of the Act, but it is not the Principal Civil Court of original jurisdiction, nor does it exercise its jurisdiction as the Principal Civil Court of original jurisdiction. Section 28 of the Act provides that all decrees made by the Court in any proceedings under the Act shall be appealable as decrees of the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the Court given in exercise of its original civil jurisdiction. The forum of appeal against decrees of the Court made in exercise of its original civil jurisdiction is provided under Sec. 15 of the Gujarat Civil Courts Act, 2005. At the cost of repetition, it may be noted that in case the amount or value of the subject-matter of the original suit or proceeding is less than five lakh rupees, sub-sec. (2) of Sec. 15 provides for appeals to the Court of District Judge and in

other cases, to the High Court.

17. A contention has been raised by the learned Advocate for the appellant that clause (a) of sub-sec. (2) of Sec. 15 only provides for pecuniary jurisdiction and that in case the pecuniary jurisdiction of the Court is less than five lakhs of rupees, the appeal would lie to the District Judge, and in case the pecuniary jurisdiction is above five lakhs of rupees, the appeals would lie to the High Court, however, in all other cases, which are not susceptible to monetary evaluation, the appeals would lie to the High Court and not to the Court of District Judge. The said contention does not merit acceptance for the reason that if such contention were to be accepted, the words "to the High Court in other cases" as provided under clause (b) of sub-sec. (2) of Sec. 15 would be rendered redundant. Clause (a) provides for an appeal to the Court of District Judge when the amount or value of the subject-matter of the original suit or proceedings is less than five lakhs of rupees, whereas clause (b) provides that in other cases, to the High Court. On a combined reading of clauses (a) and (b), this Court is of the view that the same means that where the amount or value of the subject-matter of the original suit or proceedings is less than five lakh rupees, the appeal would lie to the Court of the District Judge, and where the amount is more than five lakh rupees, the appeal would lie to the High Court. The contention that in case where the subject-matter of the original suit or proceeding is not susceptible to monetary evaluation, the appeal would lie to the High Court, does not merit acceptance in the light of the law laid down by this Court in the case of *Chhagan Karsan v. Bhagwanji Punja* (supra), wherein the Division Bench has held that all suits and proceedings of civil nature are divisible only into two classes, one class of those where the subject-matter does not exceed in amount or value ten thousand rupees and the other, of those where the subject-matter exceeds in amount or value ten thousand rupees (presently, five lakhs of rupees). The Court held that where the subject-matter is incapable of evaluation, the principle is clear that the plaintiff may put his own valuation of the subject-matter in the plaint and that would normally be accepted unless the valuation is a mala fide one. So, in either case, the suit can be valued and it is not correct to say that "the subject-matter is incapable of monetary evaluation".

18. Thus, sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act has to be read in the light of the law laid down in the above decision of this Court. Hence, every suit is required to be held to be susceptible to monetary evaluation and the appellate jurisdiction under sub-sec. (2) of Sec. 15 of the Gujarat Civil Courts Act would depend upon whether the value of the subject-matter of the original suit is less than five lakhs rupees or above. In the present case, a perusal of the memorandum of the petition filed by the appellant under Sec. 13(1)(i-a) of the Act reveals that he has not put any valuation of the suit, but has paid the Court-fees of Rs. 50/-. Therefore, in the light of the principles laid down in the decision referred to hereinabove, the valuation of the suit is required to be considered to be less than rupees five lakhs and accordingly, the appeal against the judgment of the Principal Senior Civil Judge would lie to the Court of the District Judge, and

not to this Court.

19. The above view is fortified by the decision of this Court in the case of *Bharatbhai H. Rawal v. Jyotsanaben D/o. Babubhai* (supra), wherein the Court has held thus:

"(3) It is clear that the Hindu Marriage Petition filed by the present appellant was dismissed by the learned Second Extra-Assistant Judge, Ahmedabad (Rural), Mirzapur. The question is whether the appeal lies to the District Court or to the High Court. For the said purpose, it is required to consider the provisions made in Sec. 16 of the Bombay Civil Courts Act, 1869 read with Sec. 28 of the said Act.

(4) So far as Sec. 28 of the said Act is concerned, it is positively made clear therein that all decrees made by the Court in any proceedings under the Act shall, subject to the provisions of sub-sec. (3), be appealable as decrees of the Court made, in exercise of the original civil jurisdiction of the appellate Court.

(5) Therefore, we will have to turn to the provisions made in Sec. 16 of the Bombay Civil Courts Act, 1869. The relevant provisions of Sec. 16 may be reproduced as under:

Where the Assistant Judges' decrees and orders in such cases are appealable, the appeal shall lie to the District Judge or to the High Court according as the amount or value of the subject-matter does not exceed or exceeds fifty thousand rupees.

In other words, if the valuation of the subject-matter exceeds the amount of Rs. 50,000/-, the appeal may lie to the High Court. If the valuation of the subject-matter does not exceed the amount of Rs. 50,000/-, the appeal will lie to the District Court. This is naturally the provision for appeal against the decree and order passed by an Assistant Judge.

(6) In the present matter, the judgment and decree have been passed by the learned Second Extra-Assistant Judge. Therefore, it is a judgment and decree of an Assistant Judge, within the meaning of Sec. 16 of the Bombay Civil Courts Act, 1869. Therefore, if we read the provisions of Sec. 16 of the Bombay Civil Courts Act with Sec. 28 of the said Act, then the combined reading of these two provisions makes it clear that the appeal against the judgment and decree of the learned Assistant Judge will lie to the District Court, provided, valuation of the subject-matter does not exceed the amount of Rs. 50,000/-. In the present case, the valuation of the subject-matter for Court-fees is shown as Rs. 37-50. Even in this appeal, the Court-fees have been paid in a sum of Rs. 37-50. The petition does not show any other claim therein. Therefore, the relief has been confined to the provisions made in Sec. 13 of the said Act. This would necessarily mean that the valuation of the subject-matter in the aforesaid petition of the appellant before the District Court did not and does not exceed the amount of Rs. 50,000/-. Even for the purpose of this appeal, the valuation of the subject-matter does not exceed the amount of Rs. 50,000/-.

(7) It is, therefore, clear that the valuation of the petition before the trial Court as well as before this Court does not exceed Rs. 50,000/-. In that view of the matter, in my opinion, the appeal will lie to the District Court and not to this Court.

(8) In this regard, I am fortified by the decision of this Court recorded in the case of Ramjibhai Lalbhai Patel Vs. Shantaben, . xxx xxx."

20. Insofar as the decision of the Supreme Court in the case of Ravi Kumar v. Julmi Devi (supra), on which strong reliance has been placed by the learned Counsel for the appellant, it may be noticed that in the facts of the said case, the judgment and order under appeal had been passed by the District Judge and hence, there was no dispute as regards the forum of appeal. The said decision, therefore, does not in any manner come to the aid of the appellant. As regards the decision of the Punjab and Haryana High Court in the case of 5. Kalyan Singh S/o. Ganesh Singh v. Sh. Tej Kaur D/o. Charan Singh (supra), for the reasons recorded hereinabove, with respect this Court does not find it possible to agree with the view taken in the said decision. Besides, the said decision was rendered in the context of the provisions of Secs. 38 and 39 of the Punjab Courts Act and the Court expressed the view that the said provisions do not warrant the filing of appeals under the Hindu Marriage Act to the Court of the District Judge.

21. In the light of the above discussion, the Court is of the view that the preliminary contention raised on behalf of the respondent to the effect that an appeal against the order of the Principal Senior Civil Judge under Sec. 13 of the Hindu Marriage Act when the valuation of the subject-matter does not exceed rupees five lakhs, would lie to the Court of the District Judge and not to the High Court, merits acceptance. In that view of the matter, this appeal would clearly lie before the Court of the District Judge and not before this Court, and therefore, it is not open for this Court to entertain the appeal.

22. In that event, the only alternative left to this Court is to direct the office to forthwith return the memo of appeal to the appellant for presentation of the same before the Court of competent jurisdiction, that is, the Court of the District Judge, at Amreli. Upon the memo of appeal being returned to the appellant, if the same is filed before the Court of the District Judge, the said Court shall dispose of the same in accordance with law without in any manner being influenced by any observation made in this order. It may also be noted that the present appeal has been filed before this Court within the period of limitation. It is also clarified that this Court has not expressed any opinion on the merits of the case and the appeal has not been entertained only on the ground of lack of jurisdiction. The appeal stands disposed of accordingly, with no order as to costs.