
(2008) 03 CHH CK 0013
In the Chhattisgarh High Court

Bihari and Others

APPELLANT

Vs

Amrika Bai and Others

RESPONDENT

Date of Decision : 26-03-2008

Acts Referred:

Family Courts Act, 1984 — Section 7, 8

Citation : (2008) 2 MPHT 78

Hon'ble Judges : Dilip Raosaheb Deshmukh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.R. Deshmukh, J.—Heard on I.A. No. 2, an application for taking document on record. LA. No. 2 is allowed and the document is taken on record.

2. Heard on admission.

3. Shri Malay Kumar Bhaduri, learned Counsel appearing for the appellants/defendants has raised a preliminary objection that in view of the constitution of Family Court vide Notification F. No. 1507/D-397/21-B/C.G./05, dated 24-2-2005 with effect from 28-3-2005 for Bilaspur, District, all pending proceedings stood transferred automatically to the Family Court so constituted and, therefore, the Court of VIIIth Additional District Judge, F.T.C., Bilaspur had no jurisdiction to try Miscellaneous Case No. 38/2005 for grant of maintenance under the Hindu Adoption and Maintenance Act.

4. Shri Samir Singh, learned Counsel appearing for the respondents/plaintiffs does not dispute that in view of Section 8 of the Family Courts Act and the constitution of Family Court for Bilaspur District, the Court of VIIIth Additional District Judge, F.T.C., Bilaspur had no jurisdiction to decide the application for maintenance under the Hindu Adoption and Maintenance Act. The only point urged by the learned Counsel for the respondents/plaintiffs is that objection as to jurisdiction was not taken by the appellants before the VIIIth Additional District Judge, F.T.C., Bilaspur.

5. Having heard rival submissions, I have perused the impugned order dated 2-2-2007. u/s 7 of the Family Courts Act, a Family Court shall 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 to Sub-section (1) of Section 7 of the Family Courts Act. Under Clause (f) of the Explanation, a suit or proceeding for maintenance under the Hindu Adoption and Maintenance Act falls within the purview of a suit and proceeding referred to in Clause (a) of Sub-section (1) of Section 7 of the Family Courts Act. Vide Notification F. No. 1507/D-397/21-B/C.G./05, dated 24-2-05, the Family Court for Bilaspur District was constituted with effect from 28-3-2005. Section 8 of the Family Courts Act is as under:

8. Exclusion of jurisdiction and pending proceedings.- Where a Family Court has been established for any area:

(a) no District Court or any Subordinate Civil Court referred to in Sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to Sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

(i) which is pending immediately before the establishment of such Family Court before any District Court or Subordinate Court referred to in that sub-section or, as the case may be, before any Magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.

6. In view of the provision contained in Section 8 of the Family Courts Act, all proceedings for maintenance pending immediately before the establishment of Family Court before any District Judge stood transferred to the Family Court on the date on which it is established. In this view of the matter, the impugned order passed by the VIIIth Additional District Judge, F.T.C., Bilaspur being without jurisdiction is in nullity.

7. The mere fact that objection as to jurisdiction was not taken before the VIIIth Additional District Judge, F.T.C., Bilaspur would be of no avail since in view of Section 8 of the Family Courts Act, the VIIIth Additional District Judge, F.T.C., Bilaspur ceased to have any jurisdiction over the subject-matter upon

constitution of the Family Court. The argument advanced by learned Counsel appearing for the respondents/plaintiffs does not have any force and, therefore, is liable to rejection.

8. The appeal is allowed. The impugned order is set aside. The record of Miscellaneous Case No. 38/2005 be transmitted forthwith to the Principal Judge, Family Court, Bilaspur for disposal in accordance with law, I.A. No. 1, an application for stay, stands disposed of.