

(2016) 02 MP CK 0007
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 200 of 2004

Dinesh Sharma

APPELLANT

Vs

Jyoti Sharma

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 11, Order 9 Rule 13, Section 115, Section 151, Section 37
Criminal Procedure Code, 1973 (CrPC) — Section 125
Family Courts Act, 1984 — Section 7, Section 7(1)(f), Section 8
Hindu

Citation : (2016) 161 AIC 352 : (2016) 2 JabLJ 288 : (2016) 1 MPLJ 465 : (2016) 3 RCRCivil 536

Hon'ble Judges : Alok Aradhe, J.

Bench : Single Bench

Advocate : M.P. Acharya, for the Appellant; Amit Verma, for the Respondent

Final Decision : Disposed Off

Judgement

Alok Aradhe, J.—1. The applicant in this revision preferred under section 115 of the Code of Civil Procedure has assailed the validity of the order dated 16-1-2014, by which, the objections raised by the applicant to the maintainability of the execution proceeding initiated by the non-applicant before the Family Court, Bhopal have been rejected. In order to appreciate the controversy involved in this revision, few facts need mention which are stated infra. The marriage between the applicant and non-applicant was solemnized on 21-5-1983. Sometime in the year 1990, the non-applicant initiated a proceeding under section 10 of the Hindu Marriage Act, 1955 (hereinafter referred to as the "1955 Act") in which, an ex parte decree was passed on 4-4-1990. Thereafter, the applicant in the year 1999 initiated the proceeding under section 13(1)(a) of the 1955 Act seeking dissolution of marriage, which was decreed vide judgment and decree dated 31-8-1999. The non-applicant filed an appeal before the High Court. The High Court vide judgment and decree dated 2-9-2009 set aside the

judgment and decree passed by the trial Court and on the application of the non-applicant filed under section 25 of the Act granted an amount of Rs. 5,00,000/- (Rupees Five Lakhs only) to daughter of the parties, namely, Neha towards education and marriage expenses. Being aggrieved, the applicant filed Special Leave Petition before the Supreme Court which was dismissed vide order dated 29-1-2010. Thereafter, the applicant filed review of the judgment dated 2-9-2009 before this Court which was dismissed on 11-8-2011.

2. Thereafter, the non-applicant filed an application under Order 21, Rule 11 read with section 151 of the Code of Civil Procedure before the Principal Judge, Family Court, Bhopal. The applicant filed reply on 2-12-2013, and thereafter on 20-12-2013 filed an application under section 151 of the Code of Civil Procedure, by which, an objection was raised that the execution proceeding initiated before the Family Court is not maintainable as the decree was passed by the District Court. Thereafter, another objection was filed on 16-1-2014, inter alia, on the ground that the decree passed in favour of non-applicant is illegal. The trial Court vide order dated 16-1-2011 dismissed the objections raised by the applicant. Thereafter, the applicant filed an application for review before the Executing Court which was rejected by the Executing Court vide order dated 24-2-2014. The applicant filed a writ petition against the order dated 16-1-2014 passed by the Executing Court and on 5-4-2014, the aforesaid writ petition was dismissed as withdrawn with liberty to challenge the order dated 16-1-2014 in revision under section 115 of the Code of Civil Procedure. In the aforesaid factual background, the applicant has approached this Court.

3. Learned counsel for the applicant submitted that in view of section 37 of the Code of Civil Procedure, the execution proceeding initiated by the non-applicant before the Family Court is not maintainable. While inviting the attention of this Court to section 7 of the Family Courts Act, 1984 (hereinafter referred to as "Act"), it is argued that the Family Court has no jurisdiction to execute the decree as the expression "suit" or "proceeding" used in section 7 does not include execution proceeding. In support of aforesaid submission, learned counsel for the applicant has placed reliance on the decision of Supreme Court in the case of Josekutty Joseph vs. Aniamma Thomas and another, , AIR 2006 Kerala 337 and decision of this Court in the case of Arvind Singh Bhadouria vs. Smt. Kunti Bhadouria, 2011 (1) MPLJ 122 : 2010 (IV) MPJR 263.

4. On the other hand, learned counsel for the non-applicant has invited attention of this Court to section 37 as well as section 8 of the Family Courts Act and has submitted that the only Family Court has the jurisdiction to entertain the proceeding and the decision relied on by the counsel for the applicant in case of Josekutty Joseph (supra) has no application to the fact situation of the case. In support of the his submissions, learned counsel for the non-applicant has placed reliance on the decisions in the cases of Mayadhar Mallik vs. Smt. Laxmi Mallik and others, , AIR 1999 Orissa 81, Marya Teresa Martin vs. Martin, , II (1994) DMC 401, Devaki vs. Chandrika, , I (1998) DMC 110 (DB), Smt. Rathna vs. M.P.

Ramchandran, , I (1998) DMC 318 (DB) and Satyawati vs. Rajinder Singh and another, , 2014 (1) MPLJ (S.C.) 291 : (2013) 9 SCC 491.

5. I have considered the rival submissions made at the Bar. The moot question which arises for consideration is whether the expression "suit" or "proceeding" used by the Legislature in section 7 of the Act would include an execution proceeding. The rule of construction *noscitur a sociis* as explained by Lord Mac Millan means: "The meaning of a word is to be judged by the company it keeps". As stated by the Privy Council: "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". It is a rule wider than the rule of *ejusdem generis*; rather the latter rule is only an application of the former. The rule has been lucidly explained by Gajendragadkar, J. in the following words: "This rule, according to Maxwell, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases". Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*. [See: Principles of Statutory Interpretation, 14th Edition by Justice G.P. Singh Page 555].

6. In the backdrop of aforesaid well settled principle of statutory interpretation, it would be appropriate to take note of sections 7 and 8 of the Family Courts Act, 1984, which read as under:--

"7. 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) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends.

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

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

- (c) a suit or proceeding for declaration as to the validity of a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;
- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
- (f) a suit or proceeding for maintenance;
- (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

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."

7. In the instant case, a decree for maintenance has been passed by the Civil Court which has been affirmed by the Supreme Court. The non-applicant has initiated execution proceeding of the aforesaid decree before the Family Court at

Bhopal. The expression "proceeding" used in section 7 of the Act if it is construed by applying the principle of *noscitur a sociis* leaves no iota of doubt that the same conveys an expression that it is a proceeding akin to an original proceeding and execution proceeding is not an original proceeding, as recourse to the same is taken after termination of the *lis* between the parties. It is pertinent to mention here that in case of claims for reliefs under the statutes like Hindu Marriage Act, 1955, Indian Divorce Act, 1869, Special Marriage Act, 1954 and the Guardian and Wards Act, 1890 etc. contemplates a petition not a suit. The Family Court can also entertain a claim under section 125 of the Code of Criminal Procedure, which again is not a suit. It is presumably for this reason that the legislature has employed the expression "suit" or "proceeding" in section 7(1)(f) of the Act. All the suits or proceedings contemplated by section 7 of the Act are original in nature, which culminate into a decree. Whether a Court which actually passed a decree loses its jurisdiction to execute the decree by reason of subject matter thereof being transferred to the jurisdiction of another Court is no longer *res integra* and the same has been answered in affirmative by the Supreme Court in the case of *Rammana vs. Nallaparaju*, , AIR 1956 SC 87 in which it has been held that the Court which has passed the decree has the jurisdiction to execute it. Since the execution proceeding is not covered in the expression "proceeding" as used in section 7 of the Act, therefore, the bar contained in section 8 of the Act does not apply to the fact situation of the case. Therefore, the executing Court has the jurisdiction to execute the decree which was passed prior to establishment of Family Court.

8. So far as the decision placed reliance upon by the learned counsel for the non-applicant in the case of *Mayadhar Mallik* (supra) is concerned the Division Bench dealt with the question whether the proceeding pending before the civil Court at the time of establishment of Family Court is required to be transferred to the Family Court and it has been held that proceeding has to be transferred to the Family Court. The aforesaid question does not arise in the fact situation of the case, therefore, reliance placed upon is of no assistance to non-applicant. Similarly, the decision in the case of *Marya Teresa Martin* (supra) does not apply to the fact situation of the case as the Court was concerned with the issue whether the District Court has the jurisdiction to pass decree in the matter of appointment of guardian where the Family Court exists and the aforesaid question was answered in the negative. Similarly, decision in the case of *Devaki* (supra) also does not apply to the fact situation as the same dealt with the question of about forum before which the application under Order 9 Rule 13 CPC would lie for setting aside *ex parte* decree. The decision in the case of *Smt. Ratha* (supra) also does not apply to the fact situation of the case as the Court dealt with the question about the forum before which the application seeking maintenance would lie.

9. In view of preceding analysis it is evident, the impugned order suffers from the jurisdictional infirmity. The same cannot be sustained in the eye of law. It is accordingly quashed. Needless to state, the non-applicant would be at liberty to

institute the proceeding before the civil Court which had passed the decree and in case such an application is filed, the civil Court shall make an endeavor to conclude the proceeding within a period of three months from the date of presentation of such an application. With the aforesaid directions, the revision stands disposed of.