

(2011) 07 OHC CK 0034

In the Orissa High Court

Case No : Writ Petition (C) No. 2301 of 2011

Dr. Madhusudan Baliarsingh

APPELLANT

Vs

Sasmita Baliarsingh

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 21, 151
Family Courts Act, 1984 — Section 7 , 7(1), 8
Hindu Marriage Act, 1955 — Section 13(1)
Income Tax Act, 1961 — Section 269C, 269I

Citation : (2011) 112 CLT 532

Hon'ble Judges : L. Mohapatra, J;B.K. Misra, J

Bench : Division Bench

Advocate : Dayananda Mohapatra, M. Mahapatra, G.R. Mahapatra, S.P. Nath and L.K. Nanda, for the Appellant; R.C. Sarangi, S.S. Mohanty, M.K. Pattanaik, S. Jena and A.K. Mohanty, for the Respondent

Judgement

L. Mohapatra, J.—In this writ application an important question of law relating to jurisdiction of the Family Courts established under the Family. Courts Act, 1984 is raised.

2. The background of the case is that the Petitioner had filed Mat. Case No. 465 of 2002 before the Learned Civil Judge (Senior Division), Bhubaneswar praying for dissolution of marriage & a decree of divorce u/s 13 (1)(ia) of the Hindu Marriage Act. The suit was dismissed by the Learned Civil Judge by Judgment.& decree dated 18.6.2008 & 14.7.2008 respectively. The Petitioner thereafter preferred an appeal by Matrimonial Appeal No. 5 of 2008 against the said Judgment & decree of the Learned Civil Judge. The Learned District Judge, Khurda at Bhubaneswar allowed the appeal on 21.1.2010. After the said Judgment was delivered by the Learned District Judge, a petition was filed by the Opp. Party under Order 41, Rule 21 read with Section 151 of the CPC to set aside the said Judgment & decree passed in appeal& praying for rehearing of the appeal on merit. The Learned District Judge by Order Dated 26.8.2010 allowed

the application on payment of cost & posted the case to 30.9.2010. Thereafter by Order Dated 21.12.2010, the Learned District Judge transferred the appeal to the Court of the Learned Judge, Family Court, Bhubaneswar which was established during the pendency of the appeal. Challenging the said order of the Learned District Judge transferring the case to the Court of the Learned Judge, Family Court, Bhubaneswar, this writ application has been filed.

3. Section 7 of the Family Courts Act, 1984 prescribes jurisdiction of the Family Courts. Section 8 deals with exclusion of jurisdiction in relation to suits and proceedings. Section 8 (a) provides that where a Family Court has been established for any area, 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. Explanation to Sub-Section (1) of Section 7 describes the nature of suits & proceedings to be decided by Family Courts. The nature of suits are described in (a) to (g) of the said Explanation attached to Sub-Section (1) to Section 7. On perusal of the entire provision contained in Section 7, it appears that the same relates to a suit or a proceeding. The Word "proceeding" has not been defined in the Act. With reference to these two Sections of the Family Courts Act, 1984, this Court is now called upon to decide as to whether an appeal pending before the Learned District Judge against a decree passed by the Civil Court in a case where prayer for dissolution of marriage has been turned down can be transferred to a Family Court which was established during pendency of the appeal before the District Judge. The Learned Counsel appearing for the parties, therefore, made two submissions relevant for the purpose of the case.

(1) The term "proceeding" appearing in Sections 7 & 8, whether shall include an appeal or not?

(2) In absence of any provision in the Family Courts Act, 1984 whether the Judge, Family Court can exercise Appellate jurisdiction?

A decision of the Supreme Court in the case of Vishnu Awatar Vs. Shiv Autar and Others, was cited at the bar. While dealing with the case in relation to Section 3 of the CPC (Uttar Pradesh Amendment) Act, 1978, the Supreme Court observed that the words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added, in order to bring within the purview of the revisional jurisdiction, orders passed in proceedings of an original nature, which are not of the nature" of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions. Another decision of the Supreme Court in the case of Mathew M. Thomas and Ors Vs. Commissioner of Income Tax, laid down that the word "proceedings" shall include proceedings at the Appellate stage. Reference was

made by the Supreme Court to an earlier decision in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, , where the Court held that legal pursuit of a remedy, suit appeal & second appeal are really but steps in a series of proceedings all connected by an intrinsic unity & are to be regarded as one legal proceeding.

4. Before we proceed to decide the question, we would like to refer to the objects & reasons behind enacting this law. As it appears from the Family Courts Bill, the immediate background to the need for legislation for setting up of Family Courts is the mounting pressures from several associations of women, other welfare organization & individuals for establishment of Family Courts with a view to providing quicker settlement to the family disputes where emphasis should be laid on conciliation & achieving socially desirable results. A good deal of time of the Civil Courts is taken by small family disputes which could be more expeditiously & at much lesser cost can be settled by Family Courts which should adopt an entirely new approach by avoiding rigid rules of procedure & evidence. The Bill also sought to exclusively prove within the jurisdiction of the Family Courts the matters relating to matrimonial relief as indicated in Sub-Section (1) of Section 7 of the Act. It appears that it not only refers to suits but also other proceedings in relation to the suit but does not provide for inclusion of appeals. Had it been the intention of the legislature to empower the Family Courts to exercise Appellate jurisdiction, in cases where such matters have been disposed of by a competent Civil Court in absence of a Family Court, Section 19 which provides for appeal would have made it very clear. Sub-Section (1) of Section 19 clearly provides that save as provided in Sub-Section (2) & notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973, or in any other law, an appeal shall lie from every Judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts & on law. There is nothing in Section 19 of the Act empowering the Family Court to hear an appeal. We are, therefore, of the view that the term "proceeding" appearing in Sections 7 & 8 does not include an appeal or revision. It only relates to other proceeding arising out of or in connection with the suit pending before the Learned Judge, Family Court. The decision in the case of Mathew M. Thomas & ors v. Commissioner of income tax relates to a proceeding under the Compulsory Acquisition of immovable Properties wherein the Court referred to the Income Tax Act, 1961 & C.B.D.T. Circular No. 455 dated 16.9.1986. While interpreting the Circular & Section 269-I & 269-C of the Income tax Act, the Court came to such a conclusion.

5. In view of the discussion made above, we are of the view that the Family Court cannot exercise the Appellate jurisdiction & therefore, the Learned District Judge, Khurda at Bhubaneswar could not have transferred the appeal pending before him to the Learned Judge, Family Court, Bhubaneswar for adjudication taking recourse to Section 8 of the Family Courts Act, 1984. The Order Dated 21.12.2010 passed by the Learned District Judge, Khurda impugned in this writ application is set aside.

6. Since we have held that the Family Court cannot exercise Appellate jurisdiction, the Learned District Judge, Khurda is directed to find out in how many cases such orders have been passed & all those orders be recalled & the appeals be retransferred to the Court of the District Judge for disposal in accordance with law.

7. With the above observation & direction, this writ application is disposed of.

B.K. MISRA, J.

I agree.