
(1991) 05 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.C.C. No. 42 of 1990

Filomina Mavi

APPELLANT

Vs

Petric

RESPONDENT

Date of Decision : 12-05-1991

Acts Referred:

Divorce Act, 1869 — Section 20, 23, 7, 7(1), 8

Citation : (1991) 2 DMC 534 : (1991) MPLJ 860

Hon'ble Judges : K.M. Pandey, J

Bench : Single Bench

Advocate : Brijesh Pandya, for the Appellant; None, for the Respondent

Judgement

K.M. Pande, J.

The point that has arisen for consideration is as to whether after coming into force the Family Courts Act 1984, the High Court has jurisdiction to entertain a petition u/s 23 of the Indian Divorce Act of 1869.

The brief facts of the case are that the petitioner Philomina Bhavi has presented this petition u/s 23 of the Indian Divorce Act of 1869 for judicial separation and maintenance. The opposite party in spite of notice has not filed any written statement and absented himself on the date of hearing. It is the applicant's counsel himself who raised the point of jurisdiction and wanted to make some submissions about this Court's jurisdiction after the Constitution of the Family Court. He was heard and the records have been perused.

As said earlier, the petitioner has come to this Court with a petition u/s 23 of the Indian Divorce Act alleging that she was married with the non-applicant according to Christian rites on 18-6-1973 in the city of Ratlam in a Roman Catholic Church and since then they were living as husband and wife. Her husband treats her with cruelty and does not maintain her and three children who have taken birth after the marriage.

Indian Divorce Act is an special Act Section 2 of this Act says :~

"2-Nothing hereinafter contained shall authorise any Court to grant any relief made under this Act, except where the petitioner or respondent profess the Christian religion."

Thus, the Indian Divorce Act is essentially meant for the Christians. The scheme of the Act shows that High Court and the District Court have been given concurrent jurisdiction for granting relief under this Act for proceedings seeking divorce, restitution of conjugal rights or judicial separation.

The Indian Divorce Act is in existence from long before the coming into force of the Family Courts Act and this Act is essentially meant for Christians.

The Family Courts Act came into existence in 1984 and Family Courts have been established u/s 3 of the Said Act. A Family Court has been established at Indore Ujjain, and it appears that the doubt about the jurisdiction of the High Court has arises because of certain provisions in the Family Courts Act. Section 20 of this Act says :

"20-The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other then this Act." It appears that the doubt has arises because of the provisions of Section 20 and Section 8 of this Act.

Section 7 of Chapter III of this Act defines the jurisdiction According to it:

"7-The 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 respect of suits and proceedings of the nature referred to in the Explanation, and 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. The Explanation clarifies the suits and proceedings which are to be heard by a Family Court. Explanation (a) of sub-Section (1) of Section 7, of the Family Courts Act says :

Explanation-

"7(1)(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."

Explanation (f) of sub-Section (1) of Section 7 says :-

Explanation-

"7(l)(a) a suit or proceeding for maintenance is also within the ambit of the Family Court."

Thus, all the reliefs claimed by the petitioner in this case, namely, maintenance and judicial separation are contained in sub-Section (1) of Section 7 of this Act.

Section 8 of this Act excludes the jurisdiction of certain Courts and deals about the fate of the pending proceedings. After the establishment of Family Court, according to Section 8 :

"(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 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 powers 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."

Thus, the exclusion of jurisdiction regarding the suits under this Act and the fate of the pending proceedings have been detailed in Section 8. It does not exclude the proceedings under the Indian Divorce Act pending in any district Court or High Court. The restriction to entertain petitions for reliefs obtainable u/s 7 have been imposed on district Court or any subordinate civil Court referred to in sub-Section (I) of Section 7 and the pending proceedings shall stand transferred to such Family Court. The result is that neither Section 20 nor Section 8 of the Act ousts the jurisdiction of the " High Court to grant relief under the Indian Divorce Act which is meant exclusively for Christians. In the absence of any exclusion of any proceeding under the Indian Divorce Act, the jurisdiction of the district Court and the High Court for any proceeding under the Indian Divorce Act of 1869 shall remain intact. The point of jurisdiction is decided accordingly.

Fix 10-9-91 for hearing Petitioner to lead evidence as directed earlier.