
(2010) 09 CHH CK 0053
In the Chhattisgarh High Court
Case No : Transfer Petition (C) No. 32 of 2008

Ganesh Ram Yadav

APPELLANT

Vs

Pooja Yadav and Another

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 24
Family Courts Act, 1984 — Section 7, 7(1), 8(c)

Citation : AIR 2011 Chh 92 : (2011) 2 DMC 797 : (2011) 2 MPJR 117

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Ratnesh Kumar Agrawal, for the Appellant; Janak Hidko, Advocate appears on behalf of Mr. P.S. Koshy ., for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.

The instant application u/s 24 of the CPC has been preferred for transfer of Civil Suit No. 628-A/2005 pending in the Court of Second Civil Judge Class-I, Bilaspur to the Family Court, Bilaspur.

Learned Counsel for the petitioner has argued that since after constitution of the Family Court for revenue district of Bilaspur by State Governments notification dated 24.2.2005, the present suit pending in the Court of Second Civil Judge, Class-I, Bilaspur deserves to be transferred to Family Court, Bilaspur, because, the Court of Second Civil Judge, Class-I, Bilaspur has no jurisdiction to try the suit.

In the suit preferred by the petitioner a relief has been claimed that the defendant No. 1, Ku. Pooja Yadav is not his daughter. The defendants have also moved an application under Order 7 Rule 11 of CPC for dismissing the suit as the same is not maintainable in the Court of Second Civil Judge, Class-I.

Under Section 7 of the Family Courts Act, 1984 it has been provided that the

Family Court shall have jurisdiction in respect of suits and proceedings of the nature referred to in the explanation. Explanation (e) provides that a suit or proceeding for a declaration as to the legitimacy of a person shall be adjudicated by Family Court. u/s 8(c) of the Act, it is provided that the Civil Suit or proceeding of the nature referred to in the explanation of Sub-section (1) of Section 7 which is pending immediately before establishment of such Family Court before any District Court or Subordinate Court shall stand transferred to such Family Court on the date on which it is established, 5. The present suit was filed some times in the month of February, 2004. The Family Court for the revenue district of Bilaspur excluding the jurisdiction of Civil Court, Mungeli and Pendra Road has been notified on 24th of February, 2005. The parties are residing within the territorial jurisdiction of revenue district, Bilaspur. Thus, by virtue of Section 7(1), Explanation (e) read with Section 8(c) of the Act, the Court of Second Civil Judge, Class-I, Bilaspur has no jurisdiction to adjudicate the suit as the same is within the exclusive jurisdiction of Family Court, Bilaspur and in fact by operation of law, it stands transferred to the said Family Court.

In view of the above, the instant transfer petition is allowed.

The Second Civil Judge, Class-I, Bilaspur shall transfer the Civil Suit No. 628-A/2005 to the Family Court. Bilaspur.