
(2023) 01 JH CK 0025
In the Jharkhand High Court
Case No : First Appeal No. 16 Of 2022

Kaustubha Bhushan Giri

APPELLANT

Vs

Anjali Giri And Others

RESPONDENT

Date of Decision : 17-01-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Section, Order 7 Rule 11(a)
Family Courts Act, 1984 — Section 7, 7(1) (b)
Code Of Criminal Procedure, 1973 — Section 125

Citation : (2023) 01 JH CK 0025

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Awnish Shankar, Kundan Kumar, Krishanu Roy

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties.

2. The Original Suit No.587 of 2021 was rejected by the learned Principal Judge, Family Court, Jamshedpur by the judgment dated 07.01.2022 invoking Order VII, Rule 11(a) of the Code of Civil Procedure. The impugned judgment is extracted hereunder:

"Present matter was heard on previous date on the point of admission.

The brief facts of the present suit is that marriage of petitioner and respondent no. 1 was solemnized on 04.05.1999 at Mango, Jamshedpur, in accordance with Hindu rites and customs and after the marriage, respondent no. 1 went to her matrimonial house i.e. at Chaibasa, Chakradharpur to lead her conjugal life with the petitioner, but due to differences in opinions and having problem between petitioner and respondent no. 1, they filed Mat. Suit No. 03 of 2002, before the learned court of District Judge at Chaibasa, District West Singhbhum, u/s 13B of the Hindu Marriage Act for mutual divorce, in which, marriage between the parties was dissolved by order dated 01.05.2004 and since then petitioner and

respondent no. 1 are living separately. It has further been stated that after the aforesaid divorce, respondent no. 1 filed Maintenance Case No. 09 against the petitioner, u/s 125 Cr.P.C in this court and maintenance order of Rs.3,500/- per month was passed in favour of respondent no. 1 by this court on 16.01.2022. It has further been stated that respondent no. 1 and respondent no. 2 are known to each other since 2003 and there had love relationship between them and they have got married in 2005 and used to live together as husband and wife during the period of 2005-2006 and this fact was admitted by the respondent no. 1 and further disclosed by the Nephews namely Munna Mohanty and Rajesh Kumar Mohanty in their statement u/s 161 Cr.P.C in Sadar P.S. Case No. 54 of 2007, which was filed by the respondent no.2 against the respondent no.1, later on, respondent no. 1 and 2 settled their matter and again started living together as husband and wife. At present respondent no. 1 is the legally married wife of respondent no. 2 and hence this petition has been filed to declare that respondent no.1 is not entitled to get maintenance from petitioner as per order passed in the aforesaid maintenance case. It has further been stated that there has not been any unnecessary or improper delay in filing the present suit, therefore, it is desirable and necessary to declare that respondent no. 1 is the legally married wife of respondent no. 2.

Cause of action for the present suit arose in the year 2005, when respondent no. 1 and respondent no.2 got married to each other.

Petitioner and his learned Counsel were heard on previous date. In sum and substance, the case of petitioner is that after dissolution of his marriage, his wife filed a maintenance case bearing Maintenance Case No. 09 of 2006, u/s 125 Cr.P.C and he was directed to pay Rs.3,500/- per month in favour of his wife vide order dated 16.01.2012 and now he has come for a relief that respondent no. 1 who happened to his wife is not entitled for any maintenance in view of the fact that she has married with respondent no. 2 in the year 2005 and therefore, a declaration has been sought that respondent no. 1 is legally married wife of respondent no. 2.

In the Case Law, reported in 2001 (AP) 169 (P. Srihari Vársus P. Sukunda), while discussing the scope of Section 7 of the Family Courts Act, the Hon'ble Court has held that " the essential ingredients should be a dispute between the husband and wife and said dispute can be with regard to their marital status, divorce, restitution of conjugal right, judicial separation, child custody, maintenance as also property sharing. But, in no event, the Family Court can have jurisdiction if the above dispute is absent."

As seen in the present suit, petitioner tries to seek declaration that respondent no. 1 is legally married wife of respondent no. 2 while marriage of petitioner and respondent no. 1 has already been dissolved. So, this is not a dispute between the husband and wife rather earlier husband wants a declaration of marital status of her ex wife with a third person without disclosing any date, manner, in which, marriage was performed. Hence, present suit lacks cause of action. Accordingly,

plaint is rejected under Order VII, Rule 11 (a) of the C.P.C.”

3. Learned counsel for the respondent is also agreed to the proposition advanced by the appellant that the petitioner-husband could well seek declaration of the marital status of the respondent no.1 with respondent no.2 since the outcome thereof would have a bearing on the maintenance being paid by the petitioner/appellant in terms of the earlier order passed in Maintenance Case No. 09 of 2006 under Section 125 Cr.P.C in case the respondent no.1 has remarried.

4. We have given anxious consideration to the submissions of learned counsel for the parties and perused the impugned judgment. We are also of the considered view that the suit in its present form did raise a valid cause of action in terms of Section 7(1) (b) to the explanation. Section 7 (1) of the Family Court Act, 1984 is quoted hereunder in extenso:

“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 between the parties to 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.”

5. As such, learned Family Court, Jamshedpur has committed an error in refusing

to exercise jurisdiction in the instant matter. The impugned judgment dated 07.01.2022 passed in Original Suit No. 587 of 2021 by the court of learned Principal Judge, Family Court, Jamshedpur is set aside. The matter is remanded to the learned Family Court, Jamshedpur to decide the original suit in accordance with law. The appeal is allowed.