
(1994) 02 KL CK 0031
In the High Court Of Kerala
Case No : C.R.P. No. 778 of 1993-H

Marya Teresa Martin

APPELLANT

Vs

E. Martin

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

Family Courts Act, 1984 — Section 18, 18(3), 7, 8

Citation : AIR 1994 Ker 264 : (1994) 3 ILR (Ker) 28 : (1994) 1 KLJ 599

Hon'ble Judges : L. Manoharan, J

Bench : Single Bench

Advocate : Elizabeth Mathai Idiculla, for the Appellant; B. Sureshkumar, for the Respondent

Final Decision : Allowed

Judgement

L. Manoharan, J.—Judgment-debtor in E. P. 6 of 1992 in S.F.C.O.P. 283 of 1992 pending in the District Court, Kollam is the revision-petitioner. Respondent is the decree-holder and husband of the revision-petitioner. They have only one issue, a daughter aged 5 years. Respondent is residing at Madras. According to the revision-petitioner she left him along with her child in May 1989 and started living at Kollam on account of the cruelty of the respondent who according to her is living with a concubine. Revision-petitioner filed M.C. 26 of 1991 before the Chief Judicial Magistrate's Court, Kollam claiming maintenance for herself and the child. According to the revision-petitioner, as a counter blast to the said proceeding, the respondent filed S.F.C.O.P. 283 of 1992 in the Family Court at Madras for appointing him as guardian of his minor daughter and also for the custody of the child. It is alleged by the revision-petitioner that the respondent has also filed an O.P. for restitution of conjugal rights. In S.F.C.O.P. 283 of 1992 an ex parte order was passed directing the revision-petitioner to give custody of the child to the respondent. The said order was sent for execution to the District Court, Kollam within whose jurisdiction the petitioner is living along with the child.

2. Revision-petitioner filed objection to the execution petition contending that the

decree is not executable as the same was rendered by a court which has no jurisdiction to entertain the petition. It was also contended by the revision-petitioner that even if the decree is executable, the same could be executed only by the Family Court at Thiruvananthapuram. Both the objections were overruled by the lower court as per the impugned order.

3. Learned counsel for the revision-petitioner maintained that the very approach of the Execution Court that the Madras Court was lacking only territorial jurisdiction and since the judgment-debtor did not object to the jurisdiction, the same cannot affect the executability of the decree is wrong in law as according to the learned counsel, a District Judge when exercises jurisdiction u/s 7 of the Family Courts Act, 1984 (for short "the Act") does not function as a court in relation to matters falling under the Guardians and Wards Act, 1890; there is inherent lack of jurisdiction for the District Judge to deal with a child who is not a resident within his jurisdiction. Therefore the revision-petitioner is entitled to question the executability of the decree. It is maintained by the learned counsel that the decree therefore should be treated only as a nullity. But in the circumstance, the more important question to be considered is whether the District Court, Kollam has got jurisdiction to execute the decree. If it is found that the District Court, Kollam has no jurisdiction to execute the decree, on that ground itself the order under attack has to be vacated as one rendered without jurisdiction. In that event, it will not be necessary to go into the question as to whether the decree itself is a nullity; the occasion for considering the said question can arise only when the order is sought to be executed by the Family Court at Thiruvananthapuram.

4. Therefore, I may first advert to the question as to whether the District Court, Kollam has got jurisdiction to execute the order passed by the Madras Court. The Family Court, Thiruvananthapuram was established on 6-6-1992. According to the revision-petitioner E. B. 6/1992 was filed on 23-11-1992. The impugned order was rendered on 26-3-1993. That is after Family Court, Thiruvananthapuram was established which has jurisdiction over Kollam also.

5. The contention of the learned counsel for the revision-petitioner is, after the constitution of the Family Court with respect to matters mentioned in Explanation to Section 7(1) of the Act, only the Family Court will have jurisdiction and in such circumstance the District Court, Kollam has no jurisdiction to entertain the execution petition. Consequently the order rendered by the District Judge is without jurisdiction. But the learned counsel for the revision-petitioner would maintain that as per Section 18(3) of the Act a decree or order of a Family Court can be executed by ordinary civil Court also. The learned District Judge accepted the said position. Now to appreciate the said argument, it is necessary to advert to Sections 7, 8 and 18 of the Act. So far as it is relevant Section 7 of the Act reads:

"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) to (f)

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to any minor.

....."

Section 8 of the Act reads:

"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 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."

Section 18 of the Act so far as it is relevant reads:--

"18. Execution of the decree and orders --

(1) and (2).....

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution."

A reading of Section 8 of the Act along with Section 7 would show that the same completely ousts the jurisdiction of the District Court with respect to matters enumerated in the Explanation to Section 7; and the matter in question falls under Clause (g) of the Explanation. The proceedings which were pending at the establishment of the Family Court also would stand transferred to the Family Court. Now, Section 18(3) of the Act of course states that a decree or order could be executed either by the Family Court which passed it or by the other Family Court or ordinary Civil Court to which it is sent for execution.

6. A plain reading of Section 8 of the Act along with Section 7 would show that the intention of the legislation is, after the establishment of the Family Court with respect to matters enumerated in the Explanation to Section 7 of the Act, only the Family Court will have jurisdiction. In other words the said provision do not envisage concurrent jurisdiction for the Family Court and District Court. If Subsection (3) of Section 18 of the Act is assigned the meaning as is maintained by the respondent, it will bring about a situation where so far as the execution is concerned, the Family Court as well as the District Court will have concurrent jurisdiction which, as noticed, is inconsistent with the provisions contained in Section 8 read with Section 7 of the Act.

7. Interpretation of a statutory provision is for discovering the intention of the legislature, and that has to be understood with due regard to the object of the legislation also. The words employed in a statute will acquire meaning and content depending on the context in which they are used. Words should not be torn out of the context and understood divorced from the context. An interpretation which would make another provision otiose or redundant should not be adopted.

8. At page 45 of the Interpretation of Statutes by Maxwell, 12th Edition it is stated:

"Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system,"

Therefore, Section 18(3) can convey only one meaning; the District Court can also execute the order passed by the Family Court provided no Family Court is established for that area. When such a meaning is assigned to Sub-section (3) of Section 18 of the Act, there will be no inconsistency between Section 8 and Section 18 of the Act. The result is, since a Family Court has already been established for the area including Kollam also, clearly the District Court, Kollam

has no jurisdiction to execute the order of the Family Court.

9. When such is the finding, it is clear that the order under attack is without jurisdiction and has to be set aside as one passed without jurisdiction. Once, that is the finding, it is not necessary, in the circumstance, to go into the question whether the order passed by the Madras Court is a nullity. As indicated, the order under attack in this C.R.P. is liable to be set aside and is hereby set aside.

In the result the C. R. P. is allowed as indicated above.