

(2003) 03 BOM CK 0135

In the Bombay High Court

Case No : Family Court Appeal No. 106 of 2002

Mrs. Sucheta Dilip Ghate and Ms. Sneha Dilip Ghate

APPELLANT

Vs

Dilip Shantaram Ghate

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Family Courts Act, 1984 — Section 7

Hindu Adoptions and Maintenance Act, 1956 — Section 18, 20

Special Marriage Act, 1954 — Section 26

Citation : AIR 2003 Bom 390 : (2003) 2 ALLMR 848 : (2003) 5 BomCR 822 : (2003) 4 MhLj 445

Hon'ble Judges : V.G. Palshikar, J; D.B. Bhosale, J

Bench : Division Bench

Advocate : N.P. Deshpande, for the Appellant; G.S. Godbole, for the Respondent

Final Decision : Allowed

Judgement

D.B. BHOSALE, J.—The appellants have challenged the order dated 7th February, 2002 passed by the Family Court, Pune, below Exhibit "1" in Petition No. PC-76/2000. The family court by the aforesaid order has returned the said petition filed by the appellants, who are wife and daughter of the respondent, for its presentation in proper court holding that it has no jurisdiction to entertain the same.

2. Appellant No. 1 married to the respondent on 27th December, 1991. The marriage was solemnized under the provisions of the Special Marriage Act, at Pune. Appellant No. 2 is a daughter of appellant No. 1 from her first husband. Admittedly, the marriage of appellant No. 1 with the respondent is her second marriage. After marriage appellant No. 1 had gone to Ahmedabad and started residing with the respondent in the matrimonial house. After marriage the respondent adopted appellant No. 2 at Pune and she also started residing at Ahmedabad with appellant No. 1 and the respondent. Initially, for few months they led very happy married life and as usual the differences started between

them which compelled the appellants to leave matrimonial house. It is the case of the appellants that in view of the strange behaviour of the respondent they were compelled to stay in the rented premises for monthly rent of Rs. 2400/- at Mamnagar area of Ahmedabad where they resided for two years separately from the respondent. In April 2000, the appellants came to Pune and since then they have been staying at Pune with the father of appellant No. 1. The appellants, therefore, have filed the aforesaid petition under Sections 18 and 20 of the Hindu Adoption and Maintenance Act claiming maintenance at the rate of Rs. 4,000/- per month from 8th April, 1998 till the date of filing of the petition for appellant No. 1 and Rs. 2,000/- for appellant No. 2. They have also claimed future maintenance at the same rate every month permanently. It appears that initially the said petition was filed only under the provisions of Sections 18 and 20 of the Hindu Adoption and Maintenance Act and in view thereof the appellants filed application Exhibit "27" on 13th October, 2001 seeking amendment to the petition, to insert in the petition alongwith Sections 18 and 20 of Hindu Adoption and Maintenance Act, Section 26 of the Special Marriage Act. The family court has not passed any orders on the said application till the impugned order was passed on 7th February, 2002.

3. The respondent-husband filed application Exhibit "29" on 1st December, 2001 and prayed for framing of a preliminary issue of jurisdiction and maintainability of the proceedings. The application filed by the respondent-husband was opposed by the appellants by filing her say contending that the objection to the jurisdiction of the family court at Pune had not been taken at the first instance, namely in the written statement and, therefore, the family court on 3rd March, 2001 while framing issues did not frame issue regarding jurisdiction of the family court at Pune and in view thereof, it is not open to raise such objection. The appellants have further contended in their reply to Exhibit "29" filed by the respondent-husband that they are presently residing at Pune and hence the family court at Pune has jurisdiction to entertain and try this petition. It is in this backdrop of the case the impugned order dated 7th February, 2002 came to be passed by the Family Court, Pune, by which the said petition has been returned to the appellants for its presentation in proper court.

4. We have heard learned counsel for the parties. Perused the impugned order and the documents annexed to the appeal. The family court seems to have relied upon Section 20 of the code of civil procedure, in the absence of the provision in the Hindu Adoption and Maintenance Act regarding the jurisdiction of the court to which the application for maintenance is to be presented, for returning the petition for its presentation in proper court. Mr. Deshpande, learned counsel for the appellants submitted that the family court has totally ignored Clause (c) of Section 20 of the CPC which provides institution of suit in the court within local limit of whose jurisdiction the cause of action, wholly or in part arises. He also invited our attention to Section 7 of the Family court Act, 1984, to contend that the proceedings for the maintenance can be filed before the family court inasmuch as the jurisdiction exercisable by any district court or subordinate civil

court under any law for time being in force has been withdrawn. On the other hand Mr. Godbole, learned counsel for the respondent placed heavy reliance on Section 20 of the code of civil procedure, to contend that since the appellants were residing at Ahmedabad when the cause of action arose the family court at Pune has rightly returned the proceedings for its presentation in proper court.

5. We perused the impugned order and the relevant provisions of law referred to by the parties in support of their contentions. Section 20 of the CPC deals with the jurisdiction of the courts in relation to an institution of suit. Section 20 of the CPC reads thus:

"20. Other suits to be instituted where defendants reside or cause of action arises--

Subject to the limitations aforesaid, every suit shall be instituted in a Court; within the local limits of whose jurisdiction--

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."

6. The order of the family court is based upon Section 20 to hold that the petition of the appellants has to be instituted in a court within local limits of whose jurisdiction the defendants at the time of commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, or where the cause of action, wholly or in part arises. Clauses (a), (b) and (c) of Section 20 are independent of each other. Clause (c) of Section 20 confers jurisdiction on a court within local limits of whose jurisdiction the cause of action, wholly or in part arises. Whether the cause of action either wholly or in part arises in a suit would depend on the averments made in the suit or marriage petition for that matter. In other words, the cause of action for filing of the suit should be ascertained from the facts stated in the plaint/petition. The cause of action means the circumstances forming infraction of the right or immediate occasion for action. It is left to be determined in each individual case as to where the cause of action arises. The cause of action in suit/petition has no reference to the defence taken in the suit nor is it related to the evidence by which the cause of action is established. Keeping this settled principle of law in view, we would now like to examine the averments in the said petition. It seems from the body of the petition that the appellants in the circumstances mentioned in paragraphs

3 and 4 of the said petition were compelled to leave matrimonial house and reside separately at Ahmedabad itself. The circumstances further compelled the appellants to shift to Pune where they started residing with the father of appellant No. 1. On the date of filing of the marriage petition i.e. 5th August, 2000 they were residing at Pune. The petition is filed for maintenance with effect from 8th April, 1998 till filing of the petition. It is true that till April 2000 the appellants were residing at Ahmedabad. However, admittedly they started residing at Pune since April 2000. Whether the appellants are entitled for maintenance or not would be decided by the family court. The Facts itself undoubtedly indicate that the cause of action in part did arise at Pune. By no stretch of imagination it could be said that the cause of action arose only at Ahmedabad. As a matter of fact the circumstances forming infraction of the right of the appellants continues and exists at Pune. In other words the suffering of the appellants due to lack of means of maintenance continues in Pune and in view thereof we have no hesitation in holding that the cause of action also arose at Pune. The Hindu Adoption and Maintenance Act has no provision regarding the jurisdiction of the court to which the application for maintenance is to be presented. The provisions of Hindu Adoption and Marriage Act are beneficial and social legislation for the benefit of women and infirm old parents for their maintenance while in distress. It cannot be imagined by any stretch of imagination that such person in distress would have to run from pillar to post for relief under the provision of Hindu Adoption and Maintenance Act, if the husband or son keeps on changing his residence or prefers to reside in far away town from the two of wife or parents. In view of this we are of the considered view that taking recourse to Clause (c) of Section 20 of the code of civil procedure, the proceedings could be instituted at a place of residence of wife who is residing at different place than her husband. The family court at Pune, therefore, shall have jurisdiction to entertain the said petition filed by the appellants under the provisions of Hindu Adoption and Marriage Act and Special Marriage Act.

7. In the result the impugned order dated 7.2.2002, passed by the Judge, Family Court, Pune below "Exhibit 1" in Petition No. PC-76/2000 is quashed and set aside. The said petition is restored on the file of the Family Court, Pune, which is expected to decide the same on merits in accordance with law. The appeal is accordingly allowed with no orders as to costs.