
(2012) 03 MP CK 0125
In the Madhya Pradesh High Court
Case No : F.A. No. 405 of 2011

Om Prakash Tiwary and Others

APPELLANT

Vs

Smt. Neetu Tiwary

RESPONDENT

Date of Decision : 06-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3, Order 2 Rule 2, Order 7 Rule 11
Criminal Procedure Code, 1973 (CrPC) — Section 7
Family Courts Act, 1984 — Section 20, 7, 7(1), 7(1)(a), 8
Hindu Marriage Act, 1955 — Section 10, 11, 12, 13, 27

Citation : AIR 2012 MP 142 : (2013) 1 DMC 268 : (2012) ILR (MP) 974

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : P.N. Pathak, for the Appellant; Suyash Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Krishn Kumar Lahoti, J.—This appeal is directed against an order dt. 2.5.2011 passed by the Family Court, Shadol in Civil Suit No. 1B/11 by which the Family Court rejected an application filed by the appellants under Order 7 Rule 11 C.P.C. for dismissal of the suit filed by the respondent against the appellant. The contentions of the appellant before this Court are summarized as under:

(i) That, the suit u/s 7(i)(c) of the Family Courts Act, alone for refund of Stridhan could not have been filed as there was no relief prayed in the suit in respect of main relief as are envisaged u/s 9, 10 and 13 of the Hindu Marriage Act, 1955. It was submitted that the return of the Stridhan could not have been granted by the Family Court. Suit between the husband and wife was not in respect of any relief as provided u/s 9, 10 and 13 of the Hindu Marriage Act, 1955. In support of this contention he had referred to section 27 of the Hindu Marriage Act, 1955.

(2) The suit filed against the appellants herein except appellant No. 1 was not maintainable before the Family Court as the appellants No. 2 to 7 do not fall within the category of "parties to a marriage". Placing reliance to the judgment

of a Division Bench of Kerala High Court in Suprabha Vs. Sivaraman, and a Full Bench judgment of Punjab & Haryana High Court in Vinod Kumar Sethi and Others Vs. State of Punjab and Another, it was submitted by Sun Pathak that this appeal be allowed, the impugned order be set aside and suit filed by the respondent may be dismissed by allowing an application filed by the appellants under Order 7 Rule 11 C.P.C.

2. Shri Suyash Tripathi, learned counsel appearing for the plaintiff/ respondent submitted that the suit was maintainable u/s 7(1) Explanation (c) of the Family Courts Act, 1984 as it was a suit in respect of property of the respondent and for this purpose no reliefs as are envisaged u/s 9, 10 and 13 of the Hindu Marriage Act, 1955 were required to be sought from the Family Court. It was also submitted that when the suit was filed against the husband and his family members for return of Stridhan, the Family court was having jurisdiction to hear and decide the suit in accordance with law. He has placed reliance to a judgment of the Apex Court in K.A. Abdul Jaleel Vs. T.A. Shahida, , and para 7 of the judgment of the Keral High Court in Suprabha V. Sivaraman K.K. & anr, and submitted that this appeal may be dismissed.

3. To appreciate the rival contentions of the parties, it would be appropriate to state factual position of the case. Respondent Smt. Neetu Tiwary filed a suit before the Family Court Shahdol for return of Stridhan against the appellants. Appellant No. 1 Om Prakash Tiwary is the husband of Smt. Neetu Tiwary while the appellant No. 2 is the father-in-law and appellant No. 5 is the mother-in-law. Ramesh Tiwary and Ramayan Tiwary are brother of Om Prakash Tiwary, while Smt. Sunita Tiwary and Smt. Arti Tiwary are wives of Ramesh Tiwary and Ramayan Tiwary respectively. The allegations in the plaint are that certain properties of which details are given in the plaint are her Stridhan which are in possession of the appellants and a decree be passed against the appellants for refund of the Stridhan or to pay Rs. 11,09,241/- in lieu thereof. The suit was contested by the appellants by filing written statement. They had also filed an application under Order 7 Rule 11 C.P.C. to the effect that the suit was not maintainable in the Family Court as no reliefs, as are envisaged in sections 9, 10 and 13 of the Hindu Marriage Act, 1955 were claimed and until unless such reliefs are claimed, the property could not have been refunded to the plaintiff u/s 27 of the Hindu Marriage Act, 1955. It was submitted that claiming of main relief as are envisaged u/s 9, 10 and 13 of the Hindu Marriage Act, 1955 are sine quo non for filing of such suit and until unless such suit is filed the plaintiff was not entitled to claim refund of the Stridhan.

4. To appreciate this contention the relevant provisions deserve to be examined. Section 9 of the Hindu Marriage Act, 1955 provides for a decree of restitution of conjugal rights, section 10 provides for a decree of judicial separation and section 13 provides for a decree of divorce. Sections 11 and 12 of the Hindu Marriage Act, 1955, define void and voidable marriages. Section 27 of the Hindu Marriage Act, 1955 provides disposal of property of the parties by the Court

dealing with the petition u/s 9, 10 and 13 of the Hindu Marriage Act, 1955. The Court has power to make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife Meaning thereby that a court hearing a matter u/s 9, 10 and 13 has power to pass an order in respect of the property belonging to the parties to a marriage by way of disposal of the property at the time of decision of the suit.

Section 7(1)(a) and Explanation (c) of the Family Courts Act 1984 provides as under:

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).....

Explanation. - The suits and proceedings referred to in this subsection are suits and proceedings of the following nature, namely

(a)

(b)

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

Section 8 and 20 of the Family Courts Act deserves to be referred which read as under:

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 power 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.

20. Act to have overriding effect.- 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 than this Act.

5. Section 7(1) provides that 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 in respect to suits and proceedings of the nature referred to in the explanation. The Explanation provides that a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them shall be tried by the Family Court. Though a court dealing with petition u/s 9, 10 and 13 of the Hindu Marriage Act, 1955 have power u/s 27 to deal with such property, but, for refund of Stridhan an independent civil suit could have been filed by the respondent before the ordinary court of jurisdiction and jurisdiction could have been as per the valuation of the property, meaning thereby as per the valuation put by the respondent for refund of the property amounting to Rs. 11,09,241/- a District Court was having jurisdiction to entertain the suit of the respondent. It is not disputed before us that for refund of Stridhan, the respondent was entitled to file a suit before the ordinary civil court. When an ordinary civil court could have examined the claim of the respondent then in the light of the provisions as contained in section 8 read with section 7 we have to examine whether the Family Court has exclusive jurisdiction or respondent could have filed the suit before the ordinary court of civil jurisdiction. Section 8 specifically provides that no district court or any subordinate court referred to in sub-section (1) of section 7 shall, in relation to such area, where a Family Court has been established, have or exercise any jurisdiction in respect of any suit or" proceeding of the nature referred to in the Explanation to that sub-section and the Family Court shall have the exclusive jurisdiction in the matter. Meaning thereby that section 8 of the Family Court emphasizes the nature of the suit which have been explained in sub-section (1) to section 7. When we read Explanation (c) it is apparent that the Explanation provides in respect of a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. Meaning thereby that either of the parties to a marriage can file a suit or" proceeding before the Family Court; in respect of property of the parties. As per this Explanation, if the nature of the suit is in respect of the property of the parties to the marriage then under sub-section (a) to section 8 the Family Court was having jurisdiction to consider such suit. So, for the suit filed by the respondent,

under sub-section (1)(a) of section 8, the Family Court was having exclusive jurisdiction, in respect of the area for which the Court was established.

6. Now we have to consider next contention of appellants that whether the suit could have been filed between the parties to a marriage alone or not. For this purpose when we examine the contents of the plaint, we find that it was suit filed by the respondent against all the appellants claiming that her Stridhan properties are with the appellants, meaning thereby that the court has to consider whether the properties are in possession of the appellants or either of them and in case Family Court arrives at a finding that the appellant No. 1 or any of other appellants or all the appellants are in possession of the properties of the respondent then the Family Court could have passed a decree against all or any of them. For an example, if the plaintiff claims properties against her husband and from in-laws, then whether she is required to file two suits; one against her husband and another against her in-laws, meaning thereby that she has to split cause of action in this regard and for filing of suit against her husband she has to go before the Family Court u/s 7 and 8 of the Family Courts Act, 1984 and against her in-laws she is required to file suit before the ordinary court of civil jurisdiction. It will be contrary to the provisions as contained in Order 1 Rule 3 and Order 2 Rule 2 C.P.C. The aforesaid provisions specifically provides that the plaintiff cannot split cause of action and has to include the whole of the claim in one suit, meaning thereby the mandate of Order 2 Rule 2 read with Order 1 Rule 3 shall come into play in splitting the suit, the plaintiff is bound to file one suit against her husband and against her in-laws in such a situation when the suit is filed for recovery of Stridhan.

Now we have to examine whether it is to be filed before the Family Court or before the ordinary civil Court. Section 7 and 8 specifically provide that the Family Courts shall have exclusive jurisdiction in respect of the suit of the nature under sub-section (1) to section 7. In this provision, the emphasis is of the nature of suit and not the parties. When the suit is filed with respect of properties of the parties, who are parties to a marriage, the exclusive jurisdiction will be of family Court. Meaning thereby that the Family court shall have jurisdiction in respect of the property of the parties or of either of them. The suit filed by the respondents was definitely maintainable before the Family Court.

7. The Apex Court in K.A. Abdul Jaleel v. T.A. Shahida considered this aspect, and held that, words "suit or proceeding between the parties to a marriage" cannot be read as "parties to subsisting marriage". Suit, relating to property of spouse/ spouses where divorce does not take place the Apex Court held that the statement of Objects Reasons, clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other: irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise. The jurisdiction of a Court created specifically for resolution of disputes of certain kinds should be

construed liberally. The words "a suit or proceeding between the parties to a marriage" cannot therefore be read as parties to a subsisting marriage. The restricted meaning if ascribed to Expln. (c) appended to S.7 of the Act would frustrate the object wherefor the Family Court were set up. The dispute over properties between parties to a marriage cannot be confined to the parties to a subsisting marriage.

8. In *Suprabha v. Sivaraman K.K. & anr* (supra) a Division Bench of Kerala High Court considering the provision as contained in section 7 Explanation (c) held that the suit or proceeding must be between husband and wife with respect to property of parties or either of them and does not mean include all those who are interested in welfare of couple or those who take part to marriage ceremony. The Kerala High Court was considering the case when either husband or wife is not alive and suit is filed against parents of either of them, and in that perspective it was held that it cannot be said it is a suit or proceeding between parties to marriage, while the factual position in the present case is entirely different. It is a suit between the plaintiff Smt. Neetu Tiwary and against her husband Om Prakash Tiwary along with his family members.

9. In *P. Srihari Vs. P. Sukunda and another*, , a Division Bench of Andhra Pradesh High Court was considering the disputes between the brothers, sisters, mother, father in respect of property and considering the aforesaid, it was held that such a suit was not maintainable before the Family Court while the present case is on different footing.

10. In view of the law laid down by the Apex Court and by interpreting the provisions as contained u/s 7 and 8, there is no iota of doubt" that the Family Court was having jurisdiction to consider the suit of the respondent in respect of return of Stridhan, and she was not required to file two separate suits, one against her husband in family Court and against in-laws before the ordinary civil Court. When a suit is filed against the husband and other family members for return of Stridhan then the claim could not have been split up by the plaintiff and all the persons against whom the plaintiff's claiming the return of Stridhan could have been sued in one suit and the Family Court was having jurisdiction to decide the suit even against the in-laws of the plaintiff, meaning thereby the suit which has been filed for return of Stridhan against the husband and his family members is maintainable before the Family Court.

11. So far as the judgment of Punjab & Haryana High Court, relied by the appellants in *Vinod Kumar Seth and ors. v. State of Punjab* (supra) is concerned, in the aforesaid case, the Full Bench was considering a case u/s 406 of the I.P.C. and held that what constitute Stridhan is to be decided by the Family Court. At this juncture, we are not considering the case on merits, hut is deciding the objections raised by the defendants in respect of jurisdiction of the Family Court. Whether the property claimed by the respondent falls within the purview of Stridhan or the respondent is entitled for the aforesaid property, these questions are yet to be decided by the Family Court after hearing both the parties and in

this regard it would not be appropriate for this Court to decide the aforesaid facts because these can be decided only after recording of evidence of the parties. In view of the aforesaid, this appeal is found without merits and is dismissed with costs. Counsel fee Rs. 2,000/-