

(2015) 05 TP CK 0021
In the Tripura High Court
Case No : CRP No. 02 of 2008

Pramila Suklabaidya and Others

APPELLANT

Vs

Jyostna Suklabaidya and Others

RESPONDENT

Date of Decision : 28-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32A Rule 32A, Order 7 Rule 10, Order 7 Rule 11(d), 24
Constitution of India, 1950 — Article 227
Family Courts Act, 1984 — Section 2(d), 3, 7, 7(1), 7(e)
Specific Relief Act, 1963 — Section 34

Citation : (2015) 05 TP CK 0021

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : D.K. Biswas, for the Appellant; P. Dutta, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.C. Das, J.—By filing this petition under Article 227 of the Constitution of India the petitioners challenged order dated 23.11.2007, passed by learned Civil Judge(Junior Division), Kailashahar, North Tripura, in Title Suit No. 29 of 2006, whereunder the learned Civil Judge directed transfer of the title suit from his Court to the Court of Judge, Family Court, Kailashahar, North Tripura.

2. Heard learned counsel, Mr. D.K. Biswas for the petitioners and learned counsel, Mr. P. Dutta for the respondents.

3. The petitioners instituted Title Suit No. 29 of 2006 seeking declaration that plaintiff-petitioner No. 1 is the sole heir of late Matangini Suklabaidya and further declaration that the defendant No. 1 is not an heir of said Matangini Suklabaidya and also prayed for injunction.

3.1. The suit, as it appears, was for declaration simpliciter under Section 34 of the Specific Relief Act. While it was pending for disposal before the learned Civil

Judge, Junior Division, Kailashahar, North Tripura, by impugned order dated 23.11.2007 the learned Civil Judge held that the suit involves declaration of legitimacy of a person and such declaration is covered by Section 7 of the Family Courts Act and therefore the Family Court has got exclusive jurisdiction to deal with the case and hence learned Civil Judge transferred the case to the Family Court, Kailashahar, North Tripura and directed transfer of the case records to that Court. The learned Civil Judge also directed both the parties to appear before the learned Judge, Family Court, Kailashahar, North Tripura.

3.2. Challenging that order the present revisional application is filed.

3.3. The following two issues fell for consideration in this petition, namely--

"(i) Whether a Civil Judge, Junior Division has any jurisdiction/power to transfer a case from his Court to the Family Court?

(ii) Whether a suit for declaration of legal heir is triable by an ordinary Civil Court or by a Family Court?"

4. Learned counsel, Mr. D.K. Biswas appearing for the petitioners has submitted that a Family Court is vested with the power to deal with disputes concerning family which involves matrimonial disputes and other disputes relating to family status and maintenance, etc. The Family Court cannot declare the status of a person as to whether the person is a legal heir or not and while such dispute is involved in a civil suit, the learned Civil Judge would try the case himself and dispose it according to law. Learned Civil Judge committed a great mistake directing transfer of the case to the Family Court and the suit instituted by the petitioners does not come within the purview of Section 7(e) of the Family Courts Act.

5. Learned counsel, Mr. Dutta on the other hand appearing for the respondents has submitted that Section 7(e) of the Family Courts Act clearly stipulated the jurisdiction of the Family Court in respect of declaration as to the legitimacy of a person and since in the suit, the plaintiff-petitioners sought for a declaration that the plaintiff No. 1 is the sole heir of late Matangini Suklabaidya and that defendant No. 1 is not the heir of said Matangini Suklabaidya, the suit is well covered under Section 7(e) of the Family Courts Act and hence the learned Civil Judge rightly passed the order.

6. Let us first decide issue No. (i), as to whether a Civil Judge, Junior Division has jurisdiction/power to transfer a case from his Court to the Family Court.

6.1. A perusal of impugned order dated 23.11.2007 shows that evidence has already been recorded and the suit was at the final stage of hearing and on that day a point was raised by the learned counsel of the defendants that the suit is covered by Section 7(e) of the Family Courts Act, and hence learned Civil Judge directed transfer of the case to the Family Court, Kailashahar and further directed to send the record to the Family Court.

6.2. A Civil Judge, Junior Division has no jurisdiction or power to transfer a case from his Court to another Court. Section 24 of the Code of Civil Procedure deals with the general power of transfer and withdrawal of cases which reads as follows:

"24. General power of transfer and withdrawal.

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion, without such notice, the High Court or the District Court may, at any stage,-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding pending in any court subordinate to it, and-

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or

(iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under subsection (1), the court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,-

(a) courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) "proceeding" includes a proceeding for the execution of a decree or order.]

(4) The court trying any suit transferred or withdrawn under this section from a court of small causes shall, for the purposes of such suit, be deemed to be a court of small causes.

[(5) A suit or proceeding may be transferred under this section from a court which has no jurisdiction to try it.]"

Under the above provision of law the High Court or the District Court has been vested with the power to transfer and/or to withdraw a case. A Civil Judge, Junior Division has not been vested with any power to transfer the case of his own from one Court to another Court.

6.3. If the learned Civil Judge, Junior Division felt it necessary that the suit

should not be tried by him he would return the plaint as per the provisions prescribed under Order VII Rule 10 of CPC for presenting the plaint to the Court in which the suit should have been instituted.

6.4. If he was satisfied that the suit is barred by any law he would reject the plaint as per the provisions prescribed under Order VII Rule 11(d) of CPC. In no circumstance a Civil Judge, Junior Division can transfer a case from his Court to the Court of Family Judge for disposal of the suit. Therefore, on this ground alone the impugned order dated 23.11.2007 passed by learned Civil Judge, Junior Division was bad in law and is liable to be interfered.

7. Let us now decide issue No. (ii) whether a suit for declaration of heir is triable by an ordinary Civil Court or by a Family Court.

7.1. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith by adopting an approach radically different from that adopted in ordinary civil proceedings. The said act was enacted despite the fact that order XXXII-A of CPC was inserted by the Amendment Act, 1976 which could not bring about the desired result. We may gainfully refer here the statement of objects and reasons of the Family Courts Act, 1984 which reads as follows:

"Statement of objects and reasons

Several associations of woman, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

2. The Bill inter alia, seeks to--

(a) provide for establishment of Family Courts by the State Governments;

(b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;

(c) enable the State Governments to set up, such courts, in areas other than those specified in (b) above;

(d) exclusively provide within the jurisdiction of the Family Courts the matters relating to--

(i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;

(ii) the property of the spouses or of either of them;

(iii) declaration as to the legitimacy of any person;

(iv) guardianship of a person or the custody of any minor;

(v) maintenance, including proceedings under Chapter

IX of the Code of Criminal Procedure;

(e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;

(f) provide for the association of social welfare agencies, counselors, etc., during conciliation stage and also to secure the service of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute.

3. The Bill seeks to achieve the above objects."

7.2. Section 2(d) of the Family Courts Act defines, "Family Court" means a Family Court established under Section 3 of the Act. Section 7 of the Act prescribes the jurisdiction of the Family Court which reads as follows:

"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.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise--

(a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment."

7.3. As per the above provision prescribed in clause (e) of sub-section (1), a Family Court has got jurisdiction to try a suit or proceeding for a declaration as to the legitimacy of a person. This provision of clause (e) of sub-section (1) should be read keeping consistence of the objects and reasons of Family Courts Act. No doubt, the Family Court has got jurisdiction to declare legitimacy of a person in respect of any matrimonial status but where a suit for declaration is instituted seeking declaration that the plaintiff is the only heir of deceased Matangini Suklabaidya and the defendant No. 1 is not an heir of said Matangini Suklabaidya, the dispute squarely comes under the purview of a declaratory suit under Section 34 of the Specific Relief Act triable by a Civil Court and the Family Court cannot dispose such dispute.

7.4. In the case of Renubala Moharana and Another Vs. Mina Mohanty and Others, AIR 2004 SC 3500 : (2004) 98 CLT 302 : (2004) 2 CTC 638 : (2004) 1 DMC 810 : (2004) 5 JT 377 : (2004) 3 SCALE 687 : (2004) 4 SCC 215 : (2004) AIRSCW 3059 : (2004) 2 Supreme 613 , on the issue of legitimacy of a child the Supreme Court has held that declaratory relief as regards the legitimacy of a child cannot be granted by the Family Court. We may refer here para 6 of the judgment which reads as follows:

"6. The view taken by the High Court as regards the first prayer has been assailed before us. Under Section 7(1) read with Clause (e) of the Explanation, a suit or proceeding for a declaration "as to the legitimacy of any person" is within the jurisdiction of the Family Court. According to the appellants, the child was born on account of extra-marital relationship of Respondent No. 1 with their son (sic) the late Samuel Maharana. Accepting the case of the appellants, the child cannot obviously be treated as a legitimate child of Samuel and Mina Mohanty (R1). The question of status of the child in relation to the parties to the petition can be incidentally gone into by the Family Court if necessary while deciding the guardianship petition. That liberty has been granted to the Family Court. However, as rightly held by the Family Court and the High Court, the declaratory relief as regards the illegitimacy of the child cannot be granted. In effect, that is what the appellants want under prayer No. 1."

8. In the case at hand, the plaintiff-petitioners instituted the suit under Section 34 of the Specific Relief Act seeking declaration that plaintiff No. 1 is the only legal heir of one deceased Matangini Suklabaidya and seeking further declaration that the defendant No. 1 is not the heir of said Matangini Suklabaidya and such declaration, in my considered opinion, cannot be given by the Family Court and it is the absolute jurisdiction of the Civil Court to give such declaration as to the status of a person whether the plaintiff No. 1 is a legal heir or the defendant No. 1 is a legal heir or not.

9. The Civil Court jurisdiction cannot be put into a water type compartment. The jurisdiction of the Civil Court is wide. Only where there is a special law enacted to deal with some particular aspect the jurisdiction of the Civil Court will be ousted. The Family Court is a Court established under the Family Courts Act to deal with particular aspect in respect of the dispute concerning family, but here in this case, the status of two persons as to whether they are legal heirs or not is in the dispute which shall be decided by the Civil Court and not by the Family Court. The learned Civil Judge, Jr. Division committed gross error of law in directing transfer of the case from his Court to the Family Court and hence the impugned order is liable to be interfered and set aside.

10. Accordingly, the petition is allowed. The impugned order dated 23.11.2007 passed by the learned Civil Judge, Jr. Division, Kailashahar, North Tripura is set aside and quashed.

11. Send back the L.C. record along with a copy of this judgment.