
(2002) 12 OHC CK 0021
In the Orissa High Court
Case No : C.R.P. No. 26 of 2002

Sanjay Kumar Sharma

APPELLANT

Vs

Smt. Vidya Sharma and Another

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Family Courts Act, 1984 — Section 7(1), 8
Hindu Marriage Act, 1955 — Section 13

Citation : AIR 2003 Ori 89 : (2003) 1 OLR 385

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : Sanjit Mohanty, G.K. Mohanty and G.P. Samal, for the Appellant; B. Bhuyan, S.K. Panda and B.N. Mishra, for the Respondent

Final Decision : Allowed

Judgement

1. This revision petition is directed against an order dated 29-6-2002 passed by the Civil Judge (S.D.), 1st Court, Cuttack, in Title Suit No. 196 of 2002 holding that he has Jurisdiction to entertain the suit filed by the present opposite party No. 1 as the plaintiff,

2. The brief facts leading to this petition are that marriage between the present petitioner and opposite party No. 1 was solemnised on 10-2-1995 as per Hindu rites and customs whereafter they lived as husband and wife in the house of the petitioner's father, i.e. opposite party No. 2. On 4-10- 2001, a deed of family settlement was executed between the petitioner and his father, opposite party No. 2 to the effect that the petitioner would relinquish all his right, title, interest and possession over the residential house of opposite party No. 2, but the petitioner would be allowed to stay in the said residential house till the end of April 2002. after which he will have his separate residence and opposite party No. 2 will give a sum of Rs. 50,000/- to the petitioner for the said purpose,

3. As it appears from the averments made in the present revision petition, a petition was filed by the present opposite party No. 1 before the Judge, Family

Court, Cuttack u/s 13 of the Hindu Marriage Act, basing mainly upon the deed of settlement, and the same was registered as Civil Proceeding" No. 209 of 2002. It is alleged that after the said proceeding was initiated and notice was received by the opposite parties, opposite party No. 1 filed Title Suit No. 196 of 2002 with the following relief :

(a) Let a decree for declaration be passed declaring the deed of settlement dated 8-2-2002 said to have been executed by the plaintiff before the Notary Sri N. N. Nanda to be void, illegal one and not binding upon the plaintiff inter alia, holding therein that the same is tainted with fraud and misrepresentation.

(b) Let a further declaration be made that the plaintiff has got every right to remain in the marital home, i.e. schedule property till her marriage with defendant No. 1 is subsisting and the defendants have got no right to Illegally or forcibly drive her out from the same.

(c) Let a decree of perpetual injunction be passed restraining the defendants from illegally dispossessing the plaintiff from her marital home, i.e., the schedule property without taking recourse to the provisions known to law.

(d) Let a decree of mandatory injunction be passed directing the defendants to hand over all those documents and papers obtained by them from the plaintiff by fraud misrepresentation or collusion with her signature and not to utilise the same in any Court or office without the consent of the plaintiff.

(e) Cost of the suit be decreed in favour of the plaintiff.

(f) And other relief or reliefs to which the plaintiff is found entitled be passed in her favour.

4. Along with the suit the plaintiff-opposite party No. 1 also filed an application under Order 39, Rules 1 and 2, CPC (for short, the CPC) to restrain the present petitioner and pro forma opposite party No. 2 from evicting/driving out her from the residential house of pro forma opposite party No. 2. The present petitioner, who has been arrayed as defendant No. 1 in the said suit, filed his written statement and objection to the application for injunction raising the question of jurisdiction of Civil Court to entertain Title Suit No. 196 of 2002 in view of the provisions contained in Sections 7 and 8 of the Family Courts Act 1984 (In short, the "Act"). According to the learned Counsel for the petitioner the reliefs sought for in the suit come within the ambit of the provisions of Section 7 of the Act. So, the suit before Civil Court is not maintainable. The trial Court while deciding the aforesaid objection as to the jurisdiction has come to the conclusion that the reliefs sought for by the plaintiff in the suit do not come within the purview of Section 7 of the Act and, therefore, the suit is maintainable in the Civil Court.

5. Learned Counsel for the petitioner submits that in view of Explanations (b) and (d) of Section 7(1) of the Act and the provisions of Section 8 of the said Act, the suit is not maintainable before that Civil Court.

6. Mr. Bhuyan, learned Counsel for opposite party No. 1, on the other hand while vehemently objecting to the contention of the petitioner draws my attention to a decision of Karnataka High Court, reported in Smt. Vasumathi Vs. Chandriyani Madhavi and others, which is rendered under the Indian Succession Act and Muslim Women (Protection of Rights and Divorce) Act and the judgment of Allahabad High Court, reported in Amjum Hasan Siddiqui Vs. Smt. Salma B., and submits that there are certain cases which do not come within the provisions of Section 7 of the Act and the present case is one of such cases and can never be tried by the Family Court. According to him, it is only the Civil Court which is competent to try the suit of this nature.

7. It is an admitted fact that the proceeding u/s 13 of the Hindu Marriage Act has been instituted on the basis of the deed of settlement which is alleged to have been entered into between the parties, the relevant terms and conditions of which are extracted as hereunder :

(i) That by virtue of this Settlement my marriage with Sanjay Kumar Sharma will be dissolved and we will have no more marital relationship from today.

(ii) That it is settled and I declare that I have no more affection towards my two minor children born out of our wedlock hence I have no objection in the event of my husband becoming the custodian of the said minor children.

(iii) That it is further settled and I declare that I will not claim any right over the estate/property of my husband Sanjay Kumar Sharma. Hence, I will not have any manner of right, title or interest over the estate/property of my husband or his parent.

(iv) That as per this settlement and after dissolution of my marriage with Sanjay Kumar Sharma I will be at liberty to re-marry any other person.

(v) That as per this Settlement I will no more be treated as the married wife of Sanjay Kumar Sharma and I will not be considered as the guardian of my children."

8. As indicated above the wife-opposite party No. 1 has filed the suit, praying for a relief, i".e. to declare the deed of settlement to be void, inter alia, amongst the other.

It appears from, the impugned order that the trial Court came to a conclusion that when there is a prayer to declare a document to be void one and further to declare that the said document is not binding upon her, as the same is tainted with fraud and misrepresentation, the matter cannot be decided by the Judge, Family Court, but can only be decided by the Civil Court, which has got jurisdiction to try the same. In this-regard, it is beneficial to quote the provisions of Sections 7 and 8 of the Act, which read as follows :

"Section 7. Jurisdiction.--(1) Subject to the other provision 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 a 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 of 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.

Sec. 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 has 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."

9. A conjoint reading of both Sections 7 and 8 of the Act, transpires the intention of the Legislature for establishment of Family Court and in respect of the matters enumerated in Section 7 of the Act, only Family Court will have jurisdiction. It does not give a concurrent jurisdiction to the Family Court and District Court. Section 20 of the Family Courts Act reads as follows :

"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."

10. A Division Bench of this Court in the case of Mayadhar Mallik v. Smt. Laxmi Mallik, reported in AIR 1999 Ori 81, while dealing with the issue of jurisdiction of the Family Court observed as follows :

"XX XX XX

Therefore, the intention of the legislature is that every legal dispute relating to any matter provided in the Explanation to Sub-section (1) of Section 7 shall be within the exclusive jurisdiction of the Family Court and any such matter, pending before a District Court or a subordinate Civil Court within the area where the Family Court has been established, shall stand transferred to the Family Court. So, by establishing a Family Court, new forum has been brought into existence to deal with the matters falling within the Explanation and no Court other than the Family Court, is to take up these matters, which in turn have been excluded from the jurisdiction of the District Court or the Subordinate Civil Courts."

Therefore, it conveys only matrimonial matter coming within the explanation to Sub-section (1) of Section 7 and Section 8 of the Family Courts Act shall be decided by the Family Court.

11. The prayer of the petitioner in the proceeding u/s 13 of the Hindu Marriage Act is to get the marriage between the petitioner and opposite party No. 1 annulled basing upon the settlement made between the parties, the details of

which are given in the foregoing paragraphs. In other words, the petitioner is going to utilise the deed of settlement dated 8-2-2002 in order to dissolve the marriage between the petitioner and opposite party No. 1. The suit has been filed to declare the document, i.e. the deed of settlement entered into between the parties, as void and illegal being tainted with fraud and misrepresentation. In order to decide whether the petitioner is entitled to get the relief of dissolution of marriage in the proceeding u/s 13 of the Hindu Marriage Act, the Family Court has to deal with the said deed of settlement relied upon by the petitioner and decide the questions whether a marriage can be annulled by virtue of the said settlement and whether the said settlement is tainted with fraud and misrepresentation, as alleged by opposite party No. 1 in the suit. That apart, the Family Court has to take a decision on the prayer for injunction made by opposite party No. 1 in the suit.

12. On perusal of the decision of this Court in Duruju Mallik and etc. Vs. Krupasindhu Swain and Others etc., , relied upon by the learned Counsel for the petitioner, I find that the judgment was rendered in a case arising out of Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 and the said decision is not applicable to the facts and circumstances of the present case.

13. Considering the facts and circumstances of the case and taking into consideration the judicial pronouncements on the subject, I am of the view that the reliefs sought for in the suit can be dealt with by the Family Court while deciding the validity of the marriage in question or as to the matrimonial status of the parties vis-a-vis the settlement entered into between the parties. So far as the prayer for injunction is concerned, the same comes within Explanation (d) of Section 7 (1) of the Act. So, for all practical purposes, the learned Judge, Family Court, can decide the issue raised by the present opposite party No. 1 and the reliefs sought for by her in the suit for which the Civil Judge has no jurisdiction to try the same.

14. For the reasons stated above, the order passed by the Civil Judge (S.D.), First Court, Cuttack dated 29-6-2002 is set aside. Title Suit No. 196 of 2002 therefore, be transferred to Judge, Family Court, Cuttack. While proceeding with the application u/s 13 of the Hindu Marriage Act, the Judge, Family Court shall frame an issue regarding the validity of the deed of settlement dated 8-2-2002 and take up the same for consideration along with other issues.

The Civil Revision is accordingly allowed. No costs.