
(1989) 11 MP CK 0023

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 71 of 1989

Shanker Kanojia

APPELLANT

Vs

Mayabai Shanker Kanojia and Another

RESPONDENT

Date of Decision : 29-11-1989

Acts Referred:

Family Courts Act, 1984 — Section 3, 4, 8

Citation : AIR 1990 MP 246 : (1990) ILR (MP) 262 : (1990) JLJ 532 : (1990) MPJR 49 : (1990) 35 MPLJ 435 : (1990) MPLJ 435

Hon'ble Judges : S.K Jha, C.J;K.M. Agrawal, J

Bench : Division Bench

Advocate : S.C. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Jha, C.J.

Shri S. C. Pandey for the appellant, heard on admission.

Learned counsel for the appellant has raised a point that since the notification u/ Section 3 of the Family Courts Act, 1984, has been issued by the State Govt., the Family Court must be deemed to have been established on the date when such notification was issued. It is true that Section-3 of the Family Courts Act, 1984, is captioned as "Establishment of Family Courts". It is, however, equally true that no Family Court can be said to have been effectively established unless the Judges to that Court have been appointed in accordance with the provisions of Section 4 of the Act. Section 4 of the Act lays down that the State Govt. may with the concurrence of the High Court appoint one or more persons to be the Judge or Judges of Family Court. From the impugned order of the learned single Judge, it appears that no Judge had been appointed on 1-4-1989 as a Judge of the Family Court. 1-4-1989 is the relevant date. It can, therefore, be said by no stretch of imagination that Section 8 of the Act which talks of exclusion of jurisdiction and pending proceedings can be said to operate in the field. Section 8

lays doWn, inter alia 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;

(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),-

shall stand transferred to such Family Court on the date on which it is established."

Learned counsel submits that since a notification u/Section 3 of the Act was issued, for all practical purposes a Family Court should be deemed to have been established and u/ Section 8 of the Act all such proceedings covered by the Explanation to Sub-section(l) of Section 7 must be deemed to have stood transferred to the Family Court on the date on which the notification was issued. We are afraid we cannot subscribe to that view, for the establishment of a Family Court in its turn implies that Judges to preside over the Family Court had been appointed and were effectively functioning. As it has already been noticed earlier that no Judge of the Family Court in question had been appointed on the relevant date i.e. 1-4-1989 and, therefore, it cannot be said that the jurisdiction of the District Court or any Subordinate Civil Court where the suit or proceedings was/ were pending, ceased and the proceedings stood transferred to the Family Court concerned for there was no Family Court worth the name to which such proceedings could stand transferred. The argument of the learned counsel for the appellant, therefore, though attractive, has no merit.

Even apart from the fact that a Bench of this Court had directed by an order dated 29-8-1989 passed in Misc. Petition No. 4016 of 1989 that in the whole State of Madhya Pradesh, the operation of Section 8 of the Family Courts Act, 1984, shall remain stayed until further orders. There has been no order to the contrary so far. It has further been said in that order that as soon as any Family Court established by the State Govt. u/s 3 of the Act is in a position to function effectively at any place, the State Govt. shall be at liberty to move this Court for vacating the interim order passed as aforesaid. In our opinion, as the learned counsel for the appellant was not in a position to state that the Family Court established by the State Govt. u/Section 3 of the Act is in a position to function effectively in so far as the subject matter of the present appeal is concerned, we can as well take judicial notice of the fact that the Family Court, although notified u,/ Section 3 of the Act is not in a position to function in so far as the present case is concerned.

No other point on merits was raised either before the trial Court or before the learned single Judge of this Court.

We do not find any merit in this appeal. It is dismissed summarily.