
(2000) 06 OHC CK 0022

In the Orissa High Court

Case No : O.J.C. No. 2515 of 2000 & Original Jurisdiction Case No. 2515 of 2000

Smt. Basanti Bose

APPELLANT

Vs

Civil Judge (Senior Division) and Others

RESPONDENT

Date of Decision : 22-06-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Hindu Marriage Act, 1955 — Section 24, 28

Citation : (2000) 90 CLT 426 : (2000) 2 OLR 252

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : P.K. Khuntia and Maheswar Mohanty, for the Appellant; G.P. Dutta, A.K. Jena and K.C. Narendra (OP-3), for the Respondent

Judgement

P.K. Misra, J.—The present opp. party No. 3, the husband, has filed Title Suit No. 436 of 1997 against the present petitioner for dissolution of the marriage, which is now pending before the Civil Judge (Senior Division), Balasore. On the basis of the application filed by the present petitioner u/s 24 of the Hindu Marriage Act, 1955 (in short, the "Act"), the trial Court passed an order directing payment of Rs. 250/- per month in addition to the amount of Rs. 350/- towards monthly maintenance as directed by the Sub-Divisional Judicial Magistrate, Balasore in a proceeding u/s 125, Code of Criminal Procedure. The trial Court also directed for payment of Rs. 400/- towards accommodation and Rs. 350/- towards educational expenses of the younger son. The present petitioner, however, filed Misc. Appeal No. 3 of 1999 in the Court of the District Judge, Balasore, claiming higher amount. Earlier by order dated, 27.3.1999, it was found by the District Judge that the appeal against an interlocutory order passed u/s 24 of the Act was not maintainable. However, it was further observed that the question as to whether a revision is maintainable or not is to be decided later on and that is how the appeal continued to be on the record of the District Judge. Subsequently, under the present impugned order dated 9.2.2000, the successor District Judge has observed :

"2. The learned advocate appearing for the respondent has contended that cases under Hindu Marriage Act as per Notification No. 8304 (Judl.) dated 30.11.1966 are being tried by the Sub-Judge being invested with the power of District Judge and hence no revision can be filed before the District Judge against such an order...."

On the aforesaid basis, the appeal was dismissed without being admitted.

2. Though initially there was some dispute as to whether an appeal against interlocutory order u/s 24 of the Act is maintainable in view of the amended provisions of Section 28 of the Act, there can be no doubt at present that no appeal can be filed against any such interlocutory order. There is no dispute that if an order is not appealable, unless there is a specific prohibition contained, revision can be filed against the decision of a Court subordinate to the High Court or District Judge. Unlike the provisions contained in the Family Courts Act prohibiting revision against an interlocutory order, there is no prohibition contained in the Hindu Marriage Act for entertaining a revision against an interlocutory order u/s 24. Decisions of various High Courts are almost unanimous on the point that a revision against interlocutory order u/s 24 can be entertained.

3. The next question is as to whether against the order of the Civil Judge (Senior Division) deciding an interlocutory matter under the Hindu Marriage Act, a revision is to be filed before the High Court or before the District Judge. In view of the Orissa Amendment amending provision of Section 115, C.P.C., there cannot be any doubt that if the valuation of the proceeding/suit is more than rupees one lakh, an appeal or revision as the case may be, is to be filed in the High Court and in other cases, revision is to be filed before the District Judge. Against a final decision in any proceedings under the Hindu Marriage Act, appeal is to be filed before the Court on the basis of pecuniary jurisdiction. In many cases, it has been observed that where no valuation has been given in a proceeding under the Hindu Marriage Act, the forum relating to filing of appeal and consequently, revision would depend upon the notional valuation. This position is now clear in view of the decision reported in *Paras Ram Vs. Janki Bai*, Similar view has been expressed by this Court in the decision reported in ILR 1978 Cal 559 (*Tarabati Pandeyani and Anr. v. Jogendra Pandey*). Where an appeal is filed before the District Judge, evidently, a second appeal is maintainable before the High Court subject, of course, to the limitations envisaged in Section 100, C.P.C. since from the aforesaid decisions, particularly that of the Orissa High Court, it is apparent that an appeal can be filed before the District Judge if the valuation is within the pecuniary limit envisaged, there is no rhyme or reason why a revision cannot be filed before the District Judge against interlocutory orders where the valuation is rupees one lakh or less.

4. The District Judge has, however, relied upon the Notification No. 8304-I-J-30/66-Judl. dated 30th November, 1966 of the Law Department. For convenience, the said Notification is extracted hereunder :

"In exercise of the powers conferred by Clause (b) of Section 3 of the Hindu Marriage Act, 1955 (25 of 1955), the State Government do hereby specify that every Court of principal Subordinate Judge in the State of Orissa shall have jurisdiction in respect of the matters dealt with in the said Act."

Though under the Hindu Marriage Act a proceeding can be initiated in the principal Civil Court of the district, in view of the Notification such proceedings can be filed before and decided by the Subordinate Judge (presently, known as Civil Judge (Senior Division)). The appeal u/s 28 is to be filed as if the appeal is against the decree of the Court deciding the matter. If in other cases, appeal can be filed before the District Judge depending upon the valuation, it is not understood as to how decision of the Civil Judge (Senior Division) in a proceeding under the Hindu Marriage Act cannot be challenged before the District Judge subject of course, to the question of pecuniary jurisdiction. In fact, in view of the decision reported in ILR 1978 Cutt. 559 (DB), there should not have been any further doubt in the matter. If appeals against all such decisions of the Civil Judge (Senior Division) irrespective of the question of valuation could be filed only before the High Court, there would not have been any necessity for the aforesaid Division Bench of this Court to consider the maintainability of an appeal on the basis of the valuation. It is apparent that the District Judge and obviously the lawyers who were representing the parties before the District Judge without noticing any of the decisions holding the field have jumped to the conclusion without any rhyme or reason that an order passed by the Civil Judge (Senior Division) in a proceeding under the Hindu Marriage Act cannot be challenged in appeal before the District Judge. It appears that even the learned counsel, who was appearing for the present petitioner had so conceded before the appellate Court regarding non-maintainability of the appeal/revision before the District Judge. Since the concession of a lawyer on a question of law is of no consequence, it has to be ignored. For the aforesaid reasons, the impugned order cannot be sustained. The matter is now remitted to the District Judge. The appeal should be treated to be a revision and should be disposed of as such.

The writ application is accordingly disposed of. There will, however, be no order.