

**(1986) 08 OHC CK 0001**

**In the Orissa High Court**

**Case No : Civil Revision No. 620 of 1983**

Smt. Sumati Baliarsingh alias Pradhan and Another

APPELLANT

Vs

Sri Fakira Mohan Pradhan

RESPONDENT

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**Date of Decision : 05-08-1986**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115  
Hindu Marriage Act, 1955 — Section 19, 9

**Citation : (1986) 62 CLT 412**

**Hon'ble Judges : D.P. Mohapatra, J**

**Bench : Single Bench**

**Advocate : S.N. Satpathy, for the Appellant; None, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

D.P. Mohapatra, J.—The short question that arises for consideration in this revision petition relates to territorial jurisdiction of the trial court, that is, the Subordinate Judge, Deogarh.

2. Petitioner No. 1 is the daughter of Petitioner No. 2 and the wife of the opposite party. The opposite party filed the application u/s 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") for restitution of conjugal rights impleading the Petitioners as opposite parties therein. In the said proceeding the Petitioners filed an application questioning the territorial jurisdiction of the Subordinate Judge, Deogarh to entertain and dispose of the proceeding. The said application having been rejected by the court this petition u/s 115, CPC has been filed challenging the said order.

The opposite party has not chosen to appear in this proceeding in spite of due service of notice.

3. The learned Counsel for the Petitioner referring to Section 19 of the Act contends that the petition could not be filed before the court at Deogarh since that court does not satisfy the requirements of Section 19 of the Act. The learned

Counsel further contends that admittedly the marriage between Petitioner No. 1 and the opposite party was solemnised at Puri. The parties, according to him, last resided at Phulbani before parting company and Petitioner No. 1 resides at Phulbani while Petitioner No. 2 resides at Sundargarh. This under none of the clauses of Section 19 of the Act the Court at Deogarh is competent to entertain the petition. The trial court therefore erred in holding that it has jurisdiction to entertain the proceeding.

4. Before considering the contentions raised on behalf of the Petitioners it would be helpful to quote the provision of Section 19 of the Act which is relevant for the purpose:

Section 19. Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction

- (i) the marriage was solemnised, or
- (ii) the Respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iv) the Petitioner is residing at the time of the presentation of the petition, in a case where the Respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

A bare reading of the section shows that the provisions therein give the petitioning spouse the choice of selecting the forum from amongst:

- (i) the district in which the marriage was solemnized, or
- (ii) the district where the Respondent resides at the time of presentation of the petition, or
- (iii) where the husband and wife were last resided together, and
- (iv) the district court within whose local jurisdiction the Petitioner resides in cases falling under Clause (iv) of the section.

Clause (iv) provides that the petition may be presented in the district court where the Petitioner is residing at the time of presentation of the petition, in a case where the Respondent is, at that time, residing outside the territories to which the Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

It is thus clear that the opposite party in order to file the application before the Subordinate Judge, Deogarh must bring the case within any of the clauses of Section 19 of the Act. On perusal of the application u/s 9 of the Act, it appears that excepting a bald statement that the cause of action for the proceeding arose

within the territorial jurisdiction of the court, no other material fact is stated relating to the question.

The Petitioners in their written statement on the other hand while admitting that the marriage was solemnized at Puri have averred that the spouses last resided at Phulbani and the wife continues to reside there thereafter. The requirements prescribed under Clause (iv) of Section 19 have not been alleged by any of the parties. Since the question of lack of territorial jurisdiction was raised, it was incumbent upon the trial court to determine which clause of Section 19 enabled the court to entertain the case. Perusal of the impugned order show that the court has given the reason that since the prayer of the applicant (opposite party) was for restitution of conjugal rights and the intention was to bring the wife to live with the husband at Deogarh, therefore the court at Deogarh has jurisdiction to entertain the petition. This, to say the minimum, overlooks the provisions of Section 19 of the Act. As discussed above, under the provisions of that section, there is no scope to entertain the reason given by the trial court. Therefore the impugned order is unsustainable and has to be vacated.

5. It is not possible for me to dispose of the question of jurisdiction finally since there appears to be some conflict on the question where the spouses resided together last. While the opp. party states in the application that the husband and wife lived at village Kantepali within the jurisdiction of the Deogarh court where a child was born to them, it is the case of the Petitioners in the written statement that the spouses last resided together at Phulbani. Thus matter has to be determined by the Court below on materials to be produced by the parties.

6. On the discussions in the foregoing paragraphs, the revision petition is allowed and the impugned order is set aside. The trial court is directed to take up the question of jurisdiction in the light of the provisions of Section 19 of the Act and the discussions made in the judgment and dispose of the matter in accordance with law, after giving opportunities to the parties to put forth their case. There will be no order for costs.