

(2006) 03 AP CK 0141
In the Andhra Pradesh High Court
Case No : CRP No. 6530 of 2004

Thadisina Chinna Babu Rao	Vs	APPELLANT
Thadisina Saralakumari		RESPONDENT

Date of Decision : 22-03-2006

Acts Referred:

Family Courts Act, 1984 — Section 7, 7(1)

Citation : (2006) 3 ALD 801 : (2006) 5 ALT 275 : (2007) 1 ALT(Cri) 236 :
(2007) 5 RCR(Civil) 143 : (2007) 4 RCR(Criminal) 982

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : S. Rajan, for the Appellant;

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—Respondent, who is the daughter of the revision petitioner, filed O.S. No. 47 of 2004 u/s 7 of the Family Courts Act, 1984 (for short - "the Act") before the Family Court, Visakhapatnam seeking maintenance etc., from the revision petitioner. Revision petitioner filed a petition in LA. No. 823 of 2004 to dismiss the suit or return the plaint for presentation before proper Court as it has no jurisdiction to entertain the proceeding filed by a daughter against her father for maintenance, basing on the observations in P. Srihari Vs. P. Sukunda and another, , which was dismissed by the order under revision. Hence, this revision.

2. The main contention of the learned Counsel for revision petitioner is that since a reading of the Preamble, Statement of Objects and Reasons of the Act and the sequence in which clauses (a) to (g) of the Explanation to Sub-section (1) of Section 7 of the Act are arranged, coupled with the observation made in Para 5 of P. Srihari case (supra) reading :

In view of the above, the essential ingredient should be a dispute between the husband and the wife and the said dispute can be with regard to their marital

status, divorce, restitution of conjugal rights, judicial separation, child custody, maintenance, as also property sharing. But, in no event, the Family Court can have jurisdiction if the above dispute is absent. By no stretch of imagination, can the Family Court assume jurisdiction, if there is a dispute between the brothers, sisters, mothers, fathers etc. concerning property and the case on hand being one such, the Family Court had clearly no jurisdiction.

it is clear that the intendment of the Act is only to settle the disputes between spouses and so the Family Court has no jurisdiction to entertain a proceeding instituted by a daughter against the father for maintenance, because it is not a dispute between the spouses.

3. The facts in P. Srihari case (supra), relied on by the learned Counsel for the revision petitioner show that sisters filed a suit against their brothers and others, in a family Court, claiming partition of the property left behind by their father. The Court held that such suit is not envisaged by Section 7 of the Act, because it reads-

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 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.

and observed that the Family Court can assume jurisdiction only if there is a dispute between the husband and the wife, as those Courts are established to "resolve disputes between husbands and wives", with regard to their marital status divorce, restitution of conjugal rights, judicial separation, child custody, maintenance and property sharing, and so it does not have jurisdiction to entertain a case in which the dispute does not relate to those matters and "when it relates to partition of the properties between brothers and sisters". The learned Counsel for the revision petitioner laying stress on the sentence "resolve disputes between husbands and wives" contends that since the dispute in this case is not between a wife and husband, family Court has no jurisdiction. I see no force in the said contention. Those observations made in the said decision have to be understood in the context in which they were made. Their lordships in that case were considering the question whether a dispute between the brothers and sisters relating to partition of the property of their father falls under any of the items mentioned in the Explanation to Sub-section (1) of Section 7 of the Act. Suit for maintenance is different from suit for partition.

4. Since a suit or proceeding for maintenance is envisaged by clause (f) of the Explanation to Section 7 of the Act and since in this case a daughter is claiming maintenance from her father, and not a share in the property of the father, there can be no two opinions about the maintainability of the proceeding for "maintenance" in the Family Court.

5. If clause (f) in Explanation to Section 7 of the Act reading "a proceeding for maintenance", is to be interpreted as a "proceeding for maintenance between spouses" or as "proceeding for maintenance by one spouse against the other", as is sought to be interpreted by the learned Counsel for the revision petitioner, it would amount to straining the language of that clause, and amounts to adding words to interpret the meaning of the said clause. It is well known rule of interpretation of statutes that while construing a section in a statute, the Court should not either add or subtract words to or from the section, as the Privy Council in AIR 1945 108 (Privy Council) , observed "it is contrary to all rules of construction to read words into an Act, unless it is absolutely necessary to do so" and as the Supreme Court in Assessing Authority-cum-excite and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, , at Page 1615 held that it is a well settled rule of interpretation that a statute must be construed according to its plain language and that nothing should be added

nor subtracted therefrom, unless there are adequate grounds to justify such addition or subtraction. Since statement of Objects and Reasons of an Act can be taken aid of for knowing the intention of the legislature for making the law while interpreting a statute, and since Clause 2(d)(v) of the Statement of Objects and Reasons of the Act read-

Maintenance including proceedings under Chapter IX of the Code of Criminal Procedure;

it is clear that the parliament intended to bring maintenance of family members also is within the purview of the Family Court. So, it is clear that all matters relating to maintenance, including the proceedings under Chapter DC of the Cr.P.C, would come within the jurisdiction of family Courts.

6. For the above reasons, I am unable to agree with the contention of the learned Counsel for the petitioner that the Family Court has no jurisdiction to entertain a suit filed by a daughter against the father for maintenance.

7. Hence, the petition is dismissed. No costs.