

Smt. Shalu Sharma Vs Ajay Sharma

Court: Allahabad High Court

Date of Decision: Oct. 4, 2002

Acts Referred: Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 " Section 21, 21(1)

Hindu Marriage Act, 1955 " Section 21, 28

Hindu Marriage and Divorce Rules, 1956 " Rule 5

Suits Valuation Act, 1887 " Section 9

Citation: AIR 2003 All 18 : (2002) 5 AWC 3934

Hon'ble Judges: Ashok Bhushan, J

Bench: Single Bench

Advocate: M.K. Gupta, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard Sri M.K. Gupta counsel for the petitioner.

2. By his writ petition the petitioner has prayed for quashing of the order dated 27-8-2002 passed by the XIII Additional District Judge,

Ghaziabad in Civil Appeal No. 45 of 2002 by which the application of the petitioner 13-C challenging the jurisdiction of the appellate Court has

been rejected.

3. Facts giving rise to this writ petition, briefly stated, are:

The petitioner filed a petition for divorce in the Court of the Civil Judge (Senior Division), Ghaziabad which are registered marriage petition No.

679 of 2000. In paragraph 11 of the plaint it was mentioned that the suit is tentatively valued at Rs. 1,00,000/-and Court-fees of Rs. 37.50 for

divorce and Rs. 37.50 for return of articles have been separately paid. The 3rd Additional Civil Judge (Senior Division) vide its judgment dated

31-1-2002 granted decree of divorce and also directed for return of articles as mentioned in the plaint. Against the judgment and decree dated 31-

1-2002 passed by the 3rd Additional Civil Judge (Senior Division), Ghaziabad a Civil Appeal No. 45 of 2002 was filed by the defendant-

respondent in the Court of the District Judge, Ghaziabad. In the aforesaid appeal an application 13-C was filed by the petitioner who was

respondent in the appeal stating that the District Judge has no jurisdiction to entertain the appeal. XIII Additional District Judge heard the counsel

for the parties and rejected the application of the petitioner 13-C vide its order dated 27-8-2002. Petitioner by this writ petition has challenged the

order dated 27-8-2002. Sri M. K. Gupta counsel for the petitioner raised the following submission in support of the writ petition:--

1. A petition u/s 13 of the Hindu Marriage Act for divorce is not capable of giving any pecuniary valuation hence appeal against the judgment and

decree of 3rd Additional Civil Judge (Senior Division) will lie to the High Court since it is the High Court which has residuary power or hearing the

appeal. Reliance has been placed on a Full Bench Judgment of this Court in Paras Ram Vs. Janki Bai,

2. The valuation of suit given by the petitioner in Marriage Petition No. 679 of 2000 of amount of Rs. 1,00,000/- was irrelevant and the said

valuation cannot be determinative of the forum of appeal and such a valuation is to be ignored as a petition u/s 13 of Hindu Marriage Act is

incapable of valuation in the existing law.

4. I have heard counsel for the petitioner and perused the record. The only question raised in the writ petition is as to whether the appeal against

the judgment and decree of the 3rd Additional Civil Judge (Senior Division) dated 31-1-2002 will lie to the District Judge or to the High Court?

5. For considering the question raised in the writ petition it is necessary to have a look over the statutory provision governing the right of appeal

under the Hindu Marriage Act, 1955. Section 28 of the Hindu Marriage Act, 1955 relates to appeal from decrees and orders. Section 28 of the

Act is extracted below:--

28. Appeal from decrees and orders,--

(1) All decrees made by the Court in any proceeding under this Act shall, subject to the provisions of Sub-section (3), be appealable as decrees of

the Court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the Court to which appeals ordinarily lie from the

decisions of the Court given in the exercise of its original civil jurisdiction.

(2) Orders made by the Court in any proceeding under this Act u/s 25 or Section 26 shall, subject to the provisions of Sub-section (3), be

appealable, if they are not Interim orders, and every such appeal shall lie to the Court to which appeals ordinarily lie from the decisions of the

Court given in exercise of its original civil jurisdiction,

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of thirty days from the date of the decree or order.

6. The words governing the forum of the appeal are contained in Section 28(1), which are ""such appeal shall lie to the Court to which appeals

ordinarily lie from the decisions of the Court given in the exercise of its original civil Jurisdiction. Thus for finding out as to in which Court the appeal

shall lie, it has to be looked into, to which Court appeal ordinarily lies from the decision of the Court given in the exercise of its original civil

jurisdiction. Section 3(b) defines ""District Court"" in following manner:--

3(b). ""District Court"" means, in any area for which there is a city Civil Court, that Court, and in any other area the principal Civil Court of original

jurisdiction, and includes any other Civil Court which may be specified by the State Government, by notification in the Official Gazette, as having

jurisdiction in respect of the matters dealt with in this Act.

7. There is no dispute that the Court of Civil Judge has been notified by the State Government as District Court having jurisdiction in the matters

dealt with in this Act. Admittedly in the present case petition for divorce was filed before the Court of Civil Judge. The classes of the Court and the

forum for filing appeal against the judgment and decree from the original civil jurisdiction are governed by the Bengal, Agra and Assam Civil Court

Act, 1887. Section 3 of the aforesaid Act, provided classes of Civil Court, Section 3 of the said Act is quoted below:--

3. Class of Courts, There shall be following classes of Civil Courts under this Act, namely;

1. The Court of the District Judge;
2. The Court of the Additional Judge;
3. The Court of the Subordinate Judge; and
4. The Court of the Munsif.

8. In its application to the State of Uttar Pradesh, in item (3) of Section 3 the word ""Subordinate"" has been substituted by the word ""Civil Court"".

Thus in the State of Uttar Pradesh the third category of Court is a Court of Civil Judge. Section 21 of the Act provides for appeal from

subordinate Judge and Munsif. Section 21 of the Act is quoted below:--

21. Appeals from Subordinate Judges and Munsifs.--(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall be-

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made did not

exceed five thousand rupees; and

(b) to the High Court in any other case;

(2) Save as aforesaid an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under Sub-section (1) or Sub-section (2) has been assigned to an

Additional Judge, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the State Government direct, by notification in the Official Gazette, that appeals lying to the

District Judge under Sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the Court of such subordinate

Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

9. With regard to State of Uttar Pradesh by U.P. Amendment the pecuniary limit mentioned in Section 21(1)(a) has been raised as Rs. 5,00,000/-.

The aforesaid provision of Section 21 clearly spells out that if the value of the original suit does not exceed Rs. 5,00,000/- the appeal will lie to the

District Judge and in any other case it will lie to the High Court.

10. The next question to be considered is as to how the petitions under the Hindu Marriage Act, 1955 are to be valued. Rules have been framed

under the Hindu Marriage Act, 1955 in exercise of powers under Sections 14 and 21 by the High Court of Judicature at Allahabad. Rule 5 of the

Hindu Marriage and Divorce Rules, 1956 provides for contents of petition. The relevant portion of Rule 5 of the said Rules is quoted below:--

5. Contents of petition

In addition to the particulars required to be given under Order VII, Rule 1 of the Code and Section 20(1) of the Act, every petition for judicial

separation, nullity of marriage and divorce shall contain the following particulars:--

(a) the place and date of marriage;

(b),.....

11. Rule 7 provides that statement contained in civil petition shall be verified by the petitioner or some other competent person in the manner

required by the Court for verification of the plaint. Order VII, Rule 1 of the CPC to which reference has been made under Rule 5 provides for

particulars which have to be contained in the plaint. Order 7, Rule 1 of the CPC is extracted below.-

1. Particulars to be contained in plaint, The plaint shall contain the following particulars:--

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the facts showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of the claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of Court-fees, so far as the case admits.

12. Section 21 of the Hindu Marriage Act, 1955 provides that all the proceedings under this Act shall be regulated, as far as may be, by the Code

of Civil Procedure. Section 20(2) of the Hindu Marriage Act further provides that the statements contained in every petition under this Act shall be

verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be

referred to as evidence.

13. From the provisions of the Bengal, Agra and Assam Civil Courts Act, 1887 It appears that the forum of appeal depends on pecuniary

jurisdiction. Thus the valuation of the suit determines the jurisdiction of the Court and the forum for filing the appeal. The valuation of the suit is

governed by the Suits Valuation Act; 1887. Sections 8 and 9 of the Suits Valuation Act are relevant for the purpose. Section 8 provides that

where in suits other than those referred to in Section 4, Court-fees are payable ad valorem under the Court-fees Act, 1870 as in force for the time

being in the Uttar Pradesh, the value as determinable for the computation of the Court-fees and the value for purposes of jurisdiction shall be the

same. With regard to petition under the Hindu Marriage Act Article 21 of the Court-fees Act. 1870 as applicable in U. P. provides:--

21-A Application, petition or Third-seven

Memorandum under the Special rupees and fifty

Marriage Act, 1954. or the naya paise.

Hindu Marriage Act, 1955

14. Thus there is fixed Court-fees with regard to a petition under the Hindu Marriage Act, 1955 i.e. Rs. 37.50. Section 8 of the Suits Valuation

Act is not applicable. Thus the valuation with regard to petitions under the Hindu Marriage Act is governed by Section 9 of the Suits Valuation Act

which provides.-

9. Determination of value of certain suits by High Court, When the subject-matter of suits of any class other than suits mentioned in Section 4

or 8 is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of

the State Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment

for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

15. It has been submitted by the counsel for the petitioner that no Rules have been framed by the High Court u/s 9 hence there are no rules

governing the question of valuation. The counsel for the petitioner elaborating his submission stated that the petitions under the Hindu Marriage Act

including the petition for divorce are not capable of pecuniary valuation nor there are any rules laying down any criteria for valuation hence the

valuation given in the petition under the Hindu Marriage Act is irrelevant and has to be ignored.

16. The question with regard to valuation of suits incapable of being given any pecuniary valuation has been engaging attention of this Court as well

as other High Courts in several cases.

17. The words "valuation of suits" both occur in Sections 19 and 21 of the Bengal, Agra and Assam Civil Courts Act, 1887. Full Bench of our

Court in ILR (1906) All 545 Zair Husain Khan v. Khursheed Jan, considered the provisions of the Suits Valuation Act and the Bengal, Agra and

Assam Civil Courts Act, 1887 in a case pertaining to suit for restitution of conjugal rights. The Full Bench in the aforesaid case held:--

In my opinion the word "valued in Section 19 of Act No. XII of 1887 is capable of bearing the interpretation which has been hitherto put upon it,

namely, the valuation put by the plaintiff on the relief sought by him.

18. The Full Bench considering the suit for restitution of conjugal rights observed:--

It was argued before the learned Judges that a suit for restitution of conjugal rights was incapable of being valued, and this contention found favour

with them. In the case before us the suit has been valued, and therefore, I think that it is scarcely correct to say that such a suit is incapable of being

valued. It appears to me that it would be more accurate to characterize a suit of this nature as one, the subject-matter of which does not admit of

being satisfactorily valued. The Legislature (vide Section 9 of the Suits Valuation Act, 1887) has recognised the existence of classes of suits the

subject-matter of which does not admit of being satisfactorily valued, and has given power to the High Court, with the previous sanction of the

local Government, to direct that such suits shall "be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this

behalf. There are numerous classes of suits other than suits for restitution of conjugal rights which do not admit of being satisfactorily valued. For

example, suits to set aside an adoption and suits to obtain a declaratory decree where no consequential relief is claimed. This High Court has not

as yet exercised the power given to it by Section 9 of the Suits Valuation Act. Until this is done I see no reason why the existing practice, by which

a plaintiff is allowed to put his own valuation on such a suit, subject to the power of the Court to refuse to accept the valuation If in its opinion it is

not bona fide, should not be adhered to. After careful study of the language of the Bengal Civil Courts Act, I am of opinion that the legislature took

it for granted that a money value of some kind, it may be an arbitrary value, can be placed on all suits. I think this view is supported by the

language of Section 21 of the Act, which provides that an appeal from a decree or order of a subordinate Judge shall lie to the District Judge

where the value of the original suit did not exceed five thousand rupees and to the High Court in any other case.

19. Following the Full Bench judgment of our Court in Zair Husain Khan's case ILR 1906 All 545 (supra), the Division Bench of Gujarat High

Court in Chhangan Karsan Vs. Bhagwanji Punjab and Another, has also laid down that where the suit is of such nature that its subject-matter may

not be capable of being satisfactorily valued in terms of money, the plaintiff is at liberty to put its own value of plaint and such valuation may

ordinarily be accepted by the Court as a correct valuation of the subject-matter for the purposes of jurisdiction unless the Court comes to the

conclusion that a wrong valuation has been put by the plaintiff out of improper motive in which case the Court has to decide what to be considered

the proper valuation. It was held in paragraph 6 by the Division Bench:--

6. The answer is fairly clear. The third paragraph of Section 24 and Section 28 postulate that all suits and proceedings of a civil nature are

divisible only into two classes. One class of those where the subject-matter does not exceed in amount or value of ten thousand rupees and the

other of those where the subject-matter exceeds in amount or value of ten thousand rupees. The former class is dealt with in the third paragraph of

Section 24 while the latter in Section 25. There is no third class of suits or proceedings contemplated by the legislature where the subject-matter

may be incapable of monetary evaluation so that it is not possible to say whether the value of the subject-matter exceeds or does not exceed ten

thousand rupees. The reason is that in every suit or proceeding of a civil nature the subject-matter has to be valued in terms of money for the

purpose of jurisdiction. It may be that under the Bombay Court-fees Act, 1959 where the subject-matter of a suit or proceeding is not susceptible

of monetary evaluation, the legislature may have provided a fixed Court-fee, but so far as valuation for the purpose of jurisdiction is concerned,

there has to be a valuation of the subject-matter. The Suits Valuation Act, 1887 lays down the principles for valuation of the subject-matter of a

suit for the purpose of jurisdiction. But there may be suits where the subject-matter may not be capable of being satisfactorily valued in terms of

money and no rules having been made by the High Court u/s 9 no guidance may be furnished by the Suits Valuation Act, 1887, as to how the

subject-matter of such a suit should be valued. Can the Court throw up its hands in such cases and say that the subject-matter shall have no

valuation? The answer is clearly no. It is now well settled that in such cases the plaintiff may put his own valuation on the subject-matter and such

valuation would be accepted by the Court as prima facie true unless the Court is satisfied that it is defective on account of some improper motive in

which case the Court would always consider what should be regarded to be the proper value. This was laid down as far back as the beginning of

the present century by the Allahabad High Court in *Zair Husain Khan v. Khursheed Jan* ILR (1906) All 545 and by the Calcutta High Court in *Jan*

Mohamed v. Mahar Bibi ILR (1907) Cal 352. The same view was also taken by a Division Bench of the Bombay High Court in the early case of

Jasodav. Chhotu (1909) 11 Bom LR 1352.

20. From the aforesaid provisions as noted above, it is clear that a person filing a petition under the Hindu Marriage Act, 1955 is also required to

mention valuation of the case for purposes of Jurisdiction. It is true that the petitions as contemplated under the Hindu Marriage Act are not

capable of determination of pecuniary valuation but that does not in any manner estopped a petitioner to mention the value as thought proper by

him. The plaintiff or applicant who is filling a petition is free to give valuation for purposes of jurisdiction and if the valuation has been given by a

person the same cannot be said to be irrelevant or immaterial. The submission of the counsel for the petitioner that the pecuniary valuation

mentioned regarding a divorce suit is irrelevant and cannot be taken into consideration for determining the appellate forum, cannot be accepted.

According to the provisions of Section 21 of the Act No. 12 of 1887 the appellate jurisdiction is dependent on valuation of suit. Counsel for the

petitioner raised apprehension that if valuation is to be given at the instance of the plaintiff then with regard to identical dispute parties may choose

to give different valuation so as to choose different forum of appeal. Elaborating his submission, the counsel for the petitioner has stated an instance

that a case in which a petition is filed by husband u/s 13 of the Hindu Marriage Act valuing the petition at Rs. 6,00,000/- and the wife filed a

petition u/s 10 of the Act for restitution of conjugal rights and for return of articles valuing at Rs. 50,000/- and both the cases were decided by a

common judgment by a District Court, the forum of appeal being dependent on the valuation will be different in both the cases. He contended that

the above cannot be the intention of the legislature. It is to be noted that although the valuation of suit is one which plaintiff chooses to put upon it

but this is subject to power of the Court to accept the valuation, if it is in its opinion bona fide as observed by the Division Bench of Gujarat High

Court in Chhangan Karsan Vs. Bhagwanji Punjab and Another, The valuation given by the plaintiff for the purposes of jurisdiction is to be

ordinarily accepted unless the Court comes to conclusion that wrong valuation has been put by the plaintiff out of improper motive in which case

the Court should decide what should be considered to be the proper valuation. The apprehension raised by the counsel for the petitioner is thus

unfounded. The Court has ample power to correct the valuation. All these questions pertaining to valuation can very well be raised before the

Court concerned and be decided in accordance with law. Thus merely because the cases arising out of matrimonial matter are not capable of being

given pecuniary valuation, it cannot be said that the valuation need not be given or the valuation given in any such petition is irrelevant. The mention

of valuation is necessary ingredient which is required to be given in the petition u/s 13 of the Hindu Marriage Act read with Rule 5 of the Hindu

Marriage and Divorce Rules, 1956 and the Order VII, Rule 1 of the Code of Civil Procedure.

21. Such reliance has been placed by the counsel for the petitioner on Full Bench Judgment of this Court in Paras Ram Vs. Janki Bai, . In the case

before the Full Bench a petition u/s 10 of the Hindu Marriage Act was filed by the husband against the wife in the Court of the District Judge who

transferred it for disposal to the 1st Civil Judge. No valuation was given on the petition at all. The order was passed by the Civil Judge that further

proceedings on the petition of the husband shall remain stayed so long as he did not pay the wife the sum of Rs. 250/- for her cost of defending the

proceedings. The husband filed an appeal to the High Court against the said order. Appeal was valued at Rs. 250/-. In the appeal before the High

Court the question was raised as to whether the appeal will lie to the High Court or to the District Court. The Full Bench took the view that since

residuary power to entertain the appeal vests in the High Court the appeal will lie to High Court, the Full Bench ultimately held:--

In the result I hold that an appeal from an order passed u/s 24 of the Hindu Marriage Act, 1955 by a Civil Judge, who is a District Court within

the meaning of the Act, in a proceeding commenced on a petition u/s 10 of the Act which (petition) does not mention any value on the face of it,

lies to the High Court.

22. Immediately after the Full Bench Judgment again the question arose before the Division Bench in Major Dal Chand Singh Pratap Vs. Swarn

Pratap, Before the Division Bench case wife filed petition u/s 10 of the Hindu Marriage Act. The petition u/s 10 has been valued at Rs. 1,000/-.

Single Judge referred the following question for consideration of the Division Bench:--

Whether in a petition under the Hindu Marriage Act valued at less than Rs. 1000/- an appeal lies to the High Court or not?

23. The Division Bench (which consisted of Hon^{ble} M. C. Desai, J. who gave judgment in *Paras Ram Vs. Janki Bai*, Full Bench) while deciding

the aforesaid case took the view that since in the case in question valuation of Rs. 1000/- was given hence the appeal would lie before the Court of

District Judge. The Division Bench considered provisions of Code of Civil Procedure, provisions of Suits Valuation Act and the Bengal, Agra and

Assam Civil Courts Act, 1887 as well as the rules framed under the Hindu Marriage Act. The Division Bench held at page 189.-

The opening words of Rule 5 are relevant for our purposes. They are:--

5. Contents of petitions. In addition to the particulars required to be given under Order VII, Rule 1 of the Code and Section 20(1) of the Act

every petition for judicial separation nullity of marriage and divorce shall contain the following particulars.....

This rule clearly makes the provisions of Order VII, Rule 1, C.P.C. applicable to the petitions described in that rule. From this also it is clear that

Order 7, Rule 1, C.P.C. applies to a petition made u/s 10 of the Act. Section 28 of the Act, which we have already reproduced earlier, clearly

provides that "all decrees and orders made. under this Act shall be enforced in a like manner as the decrees and orders of the Court made in

the exercise of its original civil jurisdiction are enforced.

This would also show that a proceeding u/s 10 or other sections of the Act is in the nature of a regular suit, with the result that the provisions of

Order 7, Rule 1, C.P.C. would be applicable on this ground also. Clause (1) of Order 7, Rule 1, C.P.C. requires "statement of the value of the

subject-matter for purposes of jurisdiction and Court-fees so far as the case admits" to be given. Consequently, it is clear that the valuation of the

subject-matter has to be given in every petition under the Act. It is contended that the subject-matter of a petition for judicial separation is

incapable of being valued in terms of money. That does not, however, mean that no valuation can be fixed in such cases or in cases of restitution of

conjugal rights. Actually in the latter class of cases valuation has always been fixed. Inasmuch as the Court-fees on a petition u/s 10 of the Act is a

fixed one (Rs. 37.50 np), the provision of Section 9 of the Suit Valuation Act would apply. Rules have been framed for U.P. also under that

provision. We need not, however, go into this question at any length because admittedly in the case before us the subject-matter has been valued

at the figure of Rs. 1,000/-. Consequently, it is not a case where no valuation has been given. Once the subject-matter has been valued at a certain

figure, that figure would be determinative of the forum of appeal.

24. The Division Bench of our Court in Major Dal Chand Singh Pratap Vs. Swarn Pratap, was also followed by the Division Bench of Orissa High

Court in Nrusingh Charan Nayak Vs. Smt. Hemant Kumari Nayak, The Division Bench of Orissa High Court has also noted the case of Full

Bench of our High Court in Paras Ram Vs. Janki Bai, . The counsel for the petitioner has laid emphasis on following observations of the Full

Bench:--

According to the principle applied in all the cases discussed above, when the subject-matter in appeal is not capable of pecuniary valuation, the

appeal will not lie to the District Judge.

25. The judgment of Full Bench in Paras Ram v. Janki Bai alias Savitri (supra) is not applicable in the facts of the present case. The present case is

not a case in which no pecuniary valuation has been given in the suit filed by the petitioner. In the present petition admittedly the valuation of Rs.

1,00,000/- has been mentioned in paragraph 11 of the petition for the purposes of jurisdiction of the Court. The above mentioned observations

were made by the Full Bench in the facts of that case in which there was no valuation given in the petition. The submission of counsel for the

petitioner that the petition u/s 13 and other petitions under the Hindu Marriage Act are not capable of giving any pecuniary valuation hence appeal

will not lie to district Court is, too, wide to be accepted. If the above submission is accepted that the cases under the Hindu Marriage Act since are

incapable of being given pecuniary valuation all cases in which where valuation is given or not, the appeal will lie only to the High Court there will

be no case in which appeal will lie to District Judge, which interpretation is contrary to express provision of Appeal given u/s 21 of the Act XII of

1887 and also there can be no second appeal. This interpretation is also not in consonance with intendment of Section 28 of Hindu Marriage Act,

1955, cannot be accepted. The Full Bench in Paras Ram v. Janki Bai Savitri's case (supra) was distinguished in the Division Bench's case in

Major Dal Chand Singh Pratap v. Mrs. Swarn Pratap's case (supra) and the facts of the present case are similar to the aforesaid Division Bench

Judgment in which also like present case valuation was given. Thus the Full Bench authority cited by the petitioner is clearly distinguishable.

26. Another D.B. of this Court reported in Chandra Swaroop Sinha Vs. Smt. Manorama Sinha, considered the controversy. In the aforesaid

Division Bench petition was filed for divorce which was valued at Rs. 1000/-. The Division Bench laid down in paragraphs 13, 14 and 15 as under

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13. Another question that arises for consideration in this matter is as to whether an appeal shall lie to the District Judge or to the High Court in the

instant case. The contention of the learned counsel for the appellant was that under the provisions of the Act there is only one District Court and an

appeal would lie to the District Judge from the decree passed by another Court which also is a "District Court" within the meaning of the Act.

Precisely the same question had arisen in Major Dal Chand Singh Pratap Vs. Swarn Pratap, , where a Division Bench of this Court held that there

is a vital distinction between the District Judge and the "District Court". The District Court as provided in Bengal. Agra & Assam Civil Courts Act

provides several categories of Courts which are collectively called civil Courts which include the Court of District Judge, Civil Judge and the

Munsiff. The words which are used in the Act are the "District Court and the same have been defined as a Court of original civil Jurisdiction or any

other Court. The Court of original civil jurisdiction of course is a Court of the District Judge but if any other Court was also Invested with the

powers under the Act then the same powers can be exercised by a Civil Judge also. There is thus no conflict in the provisions if the decree passed

by the Civil Judge exercising jurisdiction as "District Court" under the Act is appealed against before the District Judge who can decide the matter

as an appellate Court.

14. The above decision clearly covers the point sought to be raised in this appeal and we need not dilate on this issue any further. Suffice it to say

that the petition for divorce had been valued at Rs. 1,000/- in the trial court and as such the appeal would lie only to the District Judge and not to

the High Court. Appeal from the decree of the Civil Judge can lie to the High Court only if the valuation of the Original Suit was more than Rs.

20,000/-. The appellant himself had chosen to give valuation of the petition which he was required to give under Rule 5 of the Rules framed by this

Court under the Act. The jurisdiction of the Court will, therefore, be determined on that basis alone. In this case since the petition was valued at

Rs. 1,000/- obviously the appeal would lie before the District Judge and not to the High Court.

15. In view of the above, we answer the reference accordingly and direct that F.A. No. 80 of 1978 filed in this Court is not competent and the

appeal could be only before the District Judge, Varanasi. The memorandum of appeal shall be returned for presentation to the proper Court.

27. Another Full Bench of this Court had occasion to consider Section 28 of the Hindu Marriage Act, 1955 with regard to question as to whether

a Second Appeal is maintainable from the appellate decree in proceedings under the Hindu Marriage Act. The Full Bench has laid down that

against a decree of the civil Court which is valued at Rs. 20,000/- an appeal lies to the District Judge and thereafter the second appeal to the High

Court. The Full Bench in 1984 All LJ 392 Smt. Premalata Sharma v. Bhagwat Prasad Sharma, Dehradun held in paragraphs 21 and 22 :--

21. Interpreting Sub-sections (1) and (4) of Section 28 of the Act, learned counsel appearing for the respondents contended that as the legislature

intended to provide for only one appeal, it provided limitation in respect of one appeal and not for two. He urged that had the Legislature thought

of providing two appeals against the decree contemplated by Sections 9, 10, 11 and 13, it would have enacted Section 28 differently and had

similarly provided for ninety days limitation for filing appeal to the High Court. We are unable to accept this submission. Section 28(1) provides

that all decrees passed by the Court in every proceeding under this Act are appealable to the Court to which an appeal lies from the trial Court in

its original civil jurisdiction. As against a decree of a civil Court which is dealing with a suit below Rs. 20,000/- an appeal lies to the District Judge

and, thereafter second appeal to the High Court. In case of valuation of a petition below Rs. 20,000/- the application would lie before a Civil

Judge provided that such a Court is notified u/s 3(b) of the Hindu Marriage Act to be a District Court. Section 3(b) of the aforesaid Act defines

the words district Courts" as follows :--

(c) "'district Court'" means, in any area for which there is a city civil Court, that court and in any other area the principal civil Court of original

jurisdiction, and Includes any other civil Court which may be specified by the State Government by notification in the Official Gazette, as having

jurisdiction in respect of the matters dealt within this Act.

22. From a perusal of the definition, it would appear that other courts of civil jurisdiction could also be invested with the jurisdiction to decide the

cases under Hindu Marriage Act by means of notification by the State Government in the Official Gazette. In a case, therefore, where a Civil Judge

is notified u/s 3(b) by the State Government to be a District Court, that could have jurisdiction to entertain the petition and the question of

entertainability of an appeal and, thereafter, second appeal will depend on the valuation of the subject matter given by the petitioner filing such an

application. It is correct that no rule, perhaps as it was not possible to do so, has been made in accordance with which a petition could be valued.

In the absence of such a rule, in a petition where valuation was below Rs. 20,000/- an appeal could lie to the District Judge whereas in another to

the High Court. Similar anomalies may be in existence in other jurisdictional proceedings. That itself will not rule out the interpretation of Section

28(1) that the right of appeal would be governed in the same manner as decree of a Civil Court made in exercise of its original civil jurisdiction.

The expression ""as"" used in Section 28(1) is indicative of the intention of Parliament that a decree made by the Court in any proceeding under the

Hindu Marriage Act should receive the same treatment with regard to the appealability as decree made in exercise of its original civil jurisdiction.

This expression means ""like to"" ""of the same kind,"" ""in the same manner,"" in the manner in which .

28. The view which is being taken in the present case is fully supported by view taken in the Full Benches of this Court namely Full Bench decision

in Zair Husain Khan ILR 1906 All 545 and Full Bench decision in Prem Layta Sharma 1984 All LJ 392 (supra).

29. The counsel for the petitioner has also contended that since the decree was passed by the 3rd Additional Civil Judge for return of articles

amounting to Rs. 4,88,500/-which if added with the valuation of the petition of Rs. 1,00,000/-, District Judge loses the jurisdiction to hear the

appeal. The above submission of the petitioner is misconceived. Petitioner has filed the petition before the Additional Civil Judge praying for

decree of divorce and the valuation was given In paragraph 11 as Rs. 1,00,000/- when the petitioner herself gave the valuation in her petition as

Rs. 1,00,000/- she cannot be allowed to say that the valuation is not relevant or the valuation is much more. It does not appear that at point of time

the petitioner raised any objection regarding valuation of the petitioner before the trial Court. It was open to the petitioner to raise the objection of

valuation. The memo of appeal has also been filed as Annexure 3 to the writ petition which memo also shows that the valuation of the appeal is Rs.

1,00,000/-, the appeal, as filed before the District Judge is thus fully maintainable. Further, the forum of Appeal depends on the valuation given in

suit petition originally.

30. From the aforesaid discussion the submission raised by the counsel for the petitioner cannot be accepted. The appeal filed by the respondent

before the District Judge was fully maintainable and the application 13-C filed by the petitioner has rightly been rejected. No good grounds have

been made out to interfere with the order of the learned Additional District Judge dated 27-8-2002.

31. The writ petition lacks merit and is dismissed.