

(1994) 06 GAU CK 0019

Gauhati High Court (Imphal Bench)

Case No: Civil Revision No. 5 of 1994

Kshetrimayum Ningol Thongram
Ongbi Mema alias Memcha Devi

APPELLANT

Vs

Thongram Prafullo Singh and
Another

RESPONDENT

Date of Decision: June 1, 1994

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 2, Order 14 Rule 2(1), Order 14 Rule 2(2), Order 6 Rule 17, Order 7 Rule 11
- Family Courts Act, 1984 - Section 7

Citation: (1994) 2 GLR 366

Hon'ble Judges: A.K. Patnaik, J

Bench: Single Bench

Advocate: N. Kerani Singh, for the Appellant; I. Lalitkumar Singh, for the Respondent

Judgement

A.K. Patnaik, J.

This is a revision u/s 115 of the Code of Civil Procedure, 1908 by the Plaintiff/Petitioner against the order dated 27.1.1994 of the learned Subordinate Judge, Manipur West dismissing Original Suit No. 14 of 1993 filed by the Plaintiff/Petitioner.

2. The facts of the case are that the Plaintiff/Petitioner filed Original No. 14 of 1993 in the Court of learned Subordinate Judge, Manipur West for declaration and permanent injunction against the Defendant/opposite parties. The case of the Plaintiff in the suit was that she was the widow by one Sri Thongram Tomba Singh who was serving as Headmaster of the Government Keiruk U.J.B. School and died in service on 29.6.1988. On the death of her husband, the Plaintiff was given family pension by the Government of Manipur with effect from 29.6.1988 and she continued to enjoy the family pension till the month of July, 1991. Thereafter, the

said family pension was suddenly withheld by the Government. On enquiry, the Plaintiff received information in February, 1993 that the family pension was being withdrawn by the Defendant No. 1 on the basis of an affidavit to the effect that, the Plaintiff was remarried on 2.8.1991. Since the Plaintiff was denied the benefit of family pension she filed the aforesaid suit with the following reliefs:

- (a) A decree for declaration that she is the only person to receive and enjoy the family pension as per rule;
- (b) A decree for declaration that the Defendant No. 1 has no right and title or authority of law to receive, and enjoy the family pension at the cost of the Plaintiff;
- (c) A decree for permanent injunction to restrain the Defendant No. 1 or his agent to receive and enjoy the family pension;
- (d) Costs of litigation;
- (e) Any other relief or reliefs which may be awarded to the Plaintiff be given to her in the facts and circumstances of the case.

3. The aforesaid plaint, as it appears from the order sheet maintained by the learned Subordinate Judge Manipur West, was accepted by the Court on 22.6.1993 and summons were issued to the Defendants. The Defendants after entering appearance in the said suit filed their written statement taking inter alia the plea that the Plaintiff had married various persons and in fact had also left the house of the father of the Defendants, who was also the husband of the Plaintiff. Thereafter, the Defendants filed an application under Order-VI Rule 17 of the Code of Civil Procedure, 1908 for amendment of their written statement and as per the said petition, the Defendants proposed an amendment to the written statement to the effect that the Plaintiff was never a widow/wife of Mr. Tomba Singh, the deceased father of the Defendant. It appears from the order sheet that no order has been passed by the learned Subordinate Judge on the said application of amendment. In the meanwhile, by order dated 27.1.1994 the suit was dismissed by the learned Subordinate Judge on the ground that the Family Court and not the Civil Court had jurisdiction to try the suit.

4. Mr. N. Kerani Singh, learned Counsel for the Plaintiff/Petitioner submits that the impugned order dated 27.1.94 would show that the suit has been dismissed on an application filed by the Defendants/opposite parties on the ground that the suit was barred u/s 7 of the Family Courts Act, 1984 and that the Family Court had jurisdiction over this dispute, Mr. Kerani submits that after the plaint was accepted, it was not open for the learned Subordinate Judge to dismiss the suit without complying with the provision of order XIV Rule 2 of the Code of Civil Procedure, 1908. On the basis of the said provision of the Code of Civil Procedure, 1908, Mr. Kerani submits that since a written statement had been filed by the Defendants and an application had been filed by the Defendants for dismissing the suit on the

ground of jurisdiction or bar created by the Family Courts Act, 1984, the Court should have first framed a preliminary issue if it came to the conclusion that the case would be disposed of on such a preliminary issue, and the issue was one of law only relating to the jurisdiction of the Court or a bar to the suit created by law.

5. Learned Counsel for the Defendants/opposite parties Mr. Lalit kumar on the other hand submits that under Order VII Rule 11 of the Code of Civil Procedure, 1908 the learned Subordinate Judge had powers to reject the plaint if it appeared that the suit was barred by any law.

6. The aforesaid rival contentions of the parties need examination. Under Order VII Rule 11 of the Code of Civil Procedure, 1908 the Court can reject the plaint only if, it appears from the statement in the plaint that the suit is barred by any law. In other words, while exercising the power under Order VII Rule 11 of the Code of Civil Procedure, 1908 the Court has to look into the averments in the plaint alone and can not look into the pleadings in the written statement his being the position of law, one has to look into the averments in the plaint only to come to the conclusion as to whether the Suit was barred under any law, Without reading the written statement of the Defendants and Only on a bare perusal of the plaint, and in particular the reliefs claimed in the plaint quoted above, it is difficult to come to the conclusion that the suit was barred by the provisions of the Family Courts Act, 1984.

7. The only other provision under which a suit can be dismissed on account of a bar created by any law or lack of jurisdiction of the Court is the provision contained in Order XIV Rule 2. Under Sub-rule 1 of Rule 2 of Order XIV, CPC the Court is obliged to pronounce judgment on all issues. But the said sub-rule 1 of the Rule 2 has been made expressly subject to Sub-rule 2 of Rule 2, Sub-rule 2 of Rule 2 states that where issue both of law and of fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. Thus as per the said provision of the Code of Civil Procedure, an issue relating to jurisdiction or bar to the suit created by any law can be tried preliminarily only if it is an issue of law only. Therefore, if the issue relating to jurisdiction or bar created, to any suit by any law is either an issue of fact or an issue of fact and law, the court can not try the issue preliminarily and will have to take evidence on the issue and decide the same alongwith all other issues as required by sub-rule 1 of Rule 2 of Order-IV of the Code of Civil Procedure.

8. This being the requirement of the Code of Civil Procedure, 1908, the learned Subordinate Judge could not have passed the impugned order dismissing the suit without framing a preliminary issue if he was of the opinion that the issue related to want of jurisdiction or bar to the suit created by law and was one of law only. But in the present case records of the learned Subordinate Judge shows that although issues have been framed by the learned Subordinate Judge on the basis of the

pleadings of the parties, no preliminary issue was framed by the learned Subordinate Judge relating to jurisdiction or the bar to the suit created by the Family Courts Act, 1984. The aforesaid provision of Rule 2 of Order-XIV of CPC not having been complied with, I am of the opinion that the impugned order dated 27.1.1994 dismissing the suit for want of jurisdiction suffers from material irregularity and was liable to be interfered with in revision u/s 115 of the Code of Civil Procedure, 1908.

9. Various contentions have been raised by the learned Counsel for both the parties with regard to the interpretation of Section 7 of the Family Courts Act, 1984. While counsel for the Petitioner Sri Kerani submitted that the suit was not barred u/s 7 of the Family Courts Act, the counsel for the opposite parties, Mr. Lalitkumar submitted that the suit was clearly barred under the said Section 7 of Family Courts Act, Since this question of jurisdiction may have to be decided by the learned Subordinate Judge in accordance with the provisions of Code of Civil Procedure, 1908 discussed above. I do not express any opinion on the said contentions of the learned counsels for the parties as expression of such opinion may prejudice the case of the parties in the suit. It would however be open for the learned Subordinate Judge to frame a preliminary issue on the basis of pleadings of the parties if he is of the opinion that such preliminary issue could be framed under Sub-rule 2 of Rule 2 of Order XIV of the Code of Civil Procedure, 1908 and decided first.

10. Accordingly, the impugned order dated 27.1.1994 of the learned Subordinate Judge, Manipur West dismissing the Original Suit No. 14 of 1993 is set aside. Office is directed to send back the records of O.S. No. 14 of 1993 forthwith.

This Civil Revision is disposed of. No costs.