

(2006) 06 KL CK 0050

High Court Of Kerala

Case No: Writ Petition (C) No. 34927 of 2005

Josekutty Joseph

APPELLANT

Vs

Aniamma Thomas

RESPONDENT

Date of Decision: June 15, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 10, Order 9 Rule 13(1)
- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 127
- Family Courts Act, 1984 - Section 18, 7, 7(1), 8
- Recovery of Debts Due to Banks and Financial Institutions Act, 1993 - Section 13, 17, 31, 31A

Citation: AIR 2006 Ker 337 : (2006) 2 DMC 464 : (2006) 3 ILR (Ker) 149 : (2006) 3 KLT 114

Hon'ble Judges: V. Ramkumar, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: M. Narendra Kumar and Leena Krishnan, for the Appellant; T.R. Ramachandran Nair, for the Respondent

Final Decision: Dismissed

Judgement

V. Ramkumar, J.

This Writ Petition which comes up before us upon a reference made by a learned Single Judge (Justice R. Basant), raises an interesting question of law under the Family Courts Act, 1984 (hereinafter referred to as "the Act" for short). The said question is -

Whether the decree passed by a civil court in respect of a matter covered by Clause (c) of the Explanation to Section 7(1) of the Act could be executed by the very same civil court after a Family Court has since been established for the area.

2. We heard the learned Counsel appearing on either side. While the petitioner would contend that with the establishment of the Family Court for the area the earlier decree passed by the civil court can be executed only by the Family Court, the respondent would argue that the civil court continues to have jurisdiction to execute the decree passed by it notwithstanding the subsequent establishment of the Family Court for the area in question. It is this controversy that falls for resolution before us.

3. A synoptic resume of the sequence of events culminating in the present dispute, is as follows:

The petitioner and the respondent are husband and wife. O.S. No. 675/1994 before the Subordinate Judge's Court, Pala was a suit filed by the wife against her husband and father-in-law for return of certain gold ornaments and other articles in specie or in the alternative, for their value. On 5-6-1996 the trial court decreed the suit for a sum of Rs. 1,39,000/- with 12% interest. The decree holder/wife filed an execution petition as E.P. No. 19/1997 before the Court which passed the decree, for execution of the decree. While so, the judgment-debtors/defendants preferred an appeal before this Court as A.S. 67/1997. The said appeal was admitted and all further proceedings in the E.P. were stayed by this Court. While the E.P. was thus pending before the civil court, a Family Court was established at Kottayam with effect from 19-9-1998 and the territorial limits of that Family Court included the local limits of the Sub Court, Pala as well. On 2-2-2005 this Court finally disposed of the appeal A.S. 67/1997 modifying the decree and directing realisation of a sum of Rs. 1,20,000A with 6% interest. After the disposal of the appeal, the E.P. was revived. On 25-10-2005 the decree-holder wife filed Ext.P1 statement before the executing civil court (Sub Court, Pala) to the effect that the total amount due under the decree as modified in appeal, was Rs. 1,61,907.00. On 26-10-2005 the executing civil court, after hearing both sides, passed Ext.P2 order directing the judgment-debtors to pay the above amount on or before 31-1 -2006. On 14-12-2005 the petitioner/husband filed this Writ Petition under Articles 226 and 227 of the Constitution of India for a writ of certiorari calling for the records leading to Ext.P2 order and quash the same as illegal. The main ground taken is that after the establishment of the Family Court for the area, the civil court has no jurisdiction to execute the decree and that the expression "proceedings" in Section 7(1) of the Act includes proceedings in execution of the decree and therefore with the establishment of the Family Court in that area, the E.P. which was pending before the civil court would stand transferred to the Family Court with effect from 19-9-1998 as enjoined by Section 8(c) (i) of the Act and thereafter the Family Court alone could have dealt with the said E.P.

4. Incidentally, we may notice that there is no prayer in the Writ Petition to the effect that from 19-9-1998 onwards the Family Court alone has jurisdiction to deal with the execution petition or that the civil court has no jurisdiction to deal with the execution petition. Therefore, even if this Court were to quash Ext.P2 order, it is

doubtful whether the civil court will be foreclosed from dealing with the E.P. pending before it. However, we desist from taking a hypertechnical view of the matter and avoid a consideration of the above contentions on the merit. The learned Counsel appearing for the petitioner cited the following judicial pronouncements to buttress his contentions:

1. G.M. Nair v. Jagadamma 1994 (1) KLT 207 (Single Judge).

After the establishment of the Family Court, the Magistrate before whom proceedings for execution of the order of maintenance passed u/s 127 CrPC has no jurisdiction to continue the execution proceedings.

2. Marya Teresa Martin v. Marin 1994 (1) KLT 531 (Single Judge)

District Court can execute the order passed by the Family Court only if a Family Court has not been established for the area.

3. Ali Haji v. Alima 1996 (2) KLT 997 (Single Judge)

Eventhough civil court decree was after the establishment of the Family Court, it was before the appointment of the Judge to the Family Court and hence the civil Courts" decree was one passed with jurisdiction.

4. Devaki v. Chandrika 1997 (2) KLT 746 (DB)

The Family Court alone has jurisdiction to deal with an application for setting aside an ex parte decree passed by the civil court prior to the establishment of the Family Court.

5. [Glenny, C.J. Vs. The Catholic Syrian Bank Ltd.,](#)

Debt Recovery Tribunal alone can consider a petition to set aside an ex parte decree passed by a civil court prior to the establishment of the Tribunal.

6. Allahabad Bank v. Canara Bank and Anr. AIR 2000 SC 1535

Punjab National Bank, Dasuya v. Chaggin Ram and Ors. AIR 2000 SC 2671.

Execution petition pending before the civil court on the date of establishment of the Debt Recovery Tribunal constitutes "other proceedings" within the meaning of Section 31 of Recovery of Debts Due to Banks and Financial Institutions Act, 1993, is liable to be transferred to the Tribunal.

7. [Union of India and Another Vs. Delhi High Court Bar Association and Others,](#) .

Notwithstanding the establishment of the Debt Recovery Tribunal, there is no absolute right in anyone to demand that his dispute is to be adjudicated upon by a civil court. The civil court stands replaced by the Tribunal.

5. After hearing both sides and after examining all aspects of the matter, we find ourselves unable to uphold the contentions of the petitioner. For a proper

resolution of the present controversy it may be necessary to advert to three important provisions of the Act, namely, Sections 7, 8 and 18 which are extracted herein below:

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.

8. Exclusion of jurisdiction and pending proceedings - Where a Family Court has been established for any area, -

(a) no District Court or any subordinate civil court referred to in Sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(c) every suit or proceeding of the nature referred to in the Explanation to Sub-section(1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),-

(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established".

18. Execution of decrees and orders -

(1) A decree or an order (other than an order under Chapter IX of the Code of Criminal Procedure 1973 (2) of 1974) passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and Ors.

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the

execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution.

A closer examination of the various clauses under the Explanation to Section 7(1) of the Act will indicate that the "suit or proceeding" referred to in Clauses (a) to (g) therein could only be original proceedings. This is because the suits or proceedings enumerated under the Explanation are stated to be for a decree, for a declaration, for an order, for maintenance and so on. The principle of *noscitur a sociis* persuades us to refrain from giving a different interpretation to suits or proceedings of the nature covered by Clauses (c) and (g) of the Explanation as well.

6. Prior to the establishment of the Family Court if any of the spouses or former spouses were to claim any property from the other spouse and not covered by any special statute or their personal laws, then the only recourse to them was the civil court by means of a suit. Such a claim may cover a suit of the nature envisaged by Clause (c) of the Explanation. Similarly, a claim for maintenance falling under Clause (f) of the Explanation also could be made in the form of a suit before the civil court. But in the case of claims for reliefs under the personal laws or special statutes such as the Hindu Marriage Act, 1955, Indian Divorce Act, 1869, the Special Marriage Act, 1954, the Guardians and Wards Act, 1890 etc. what is contemplated is not a suit but a petition. It was presumably for this reason that the Legislature employed the words "suits or proceedings" since proceedings initiated on a petition cannot be termed as a suit. But all the suits or proceedings envisaged under the Explanation to Section 7(1) of the Act are and can only be suits or other proceedings of an original nature and which have to ripen into a decree or a declaration or an order of injunction or an order for maintenance, custody or guardianship of a minor etc. as the case may be.

7. It is true that by virtue of the provisions contained in Section 7(1)(a) of the Act, the Family Court shall have the power to exercise all the jurisdiction that was hitherto exercised by the civil court in respect of suits and proceedings of the nature referred to in the Explanation. This means that whatever powers (including execution) which the civil court could have exercised in respect of such suits or proceedings stand vested in the Family Court upon its establishment. But the Family Court can exercise such powers (including execution) only in respect of a suit or proceeding which comes before it either by way of a statutory transfer or by way of fresh institution as contemplated by Section 8 of the Act. When the suit or proceeding referred to in the Explanation to Section 7 (1) of the Act can only be a suit or proceeding of an original nature instituted for the purpose of getting a decree, order or declaration as envisaged therein and which cannot necessarily include an execution petition, there cannot be a transfer u/s 8(c)(i) of the Act of a petition for executing a decree pending before the civil court on the date of establishment of the Family Court. It is one thing to say that the Family Court can exercise all the powers including execution in

respect of such suit or proceeding by virtue of Section 7(1)(a) of the Act, but it is another thing to say that the statutory transfer u/s 8(c) of the Act takes within its sweep even petitions for execution of decrees already passed by the civil court and pending before such civil court on the date of establishment of the Family Court for the area concerned. Section 18 of the Act pertains only to decrees or orders passed by the Family Court and Sub-section(1) thereof only enacts a fiction by which a decree or order passed by the Family Court is deemed to be one passed by the civil court for the purpose of execution. It is significant in this context to note that there is no corresponding provision in the Act treating the decree passed by the civil court as one passed by the Family Court. We are unable, In this connection, to accept the petitioner's contention that the deeming provision u/s 7(1)(b) of the Act is to treat the civil courts' decree as one passed by the Family Court. In our view, the deeming provision thereunder is only to enable the Family Court to exercise the jurisdiction in such manner as the civil court would have exercised in a suit or other proceeding of such nature. The deeming provision is intended to indicate the procedure to be followed¹ while dealing with such suit or proceeding and nothing else. As long as the decree passed by the civil court prior to the establishment of the Family Court is not deemed to be one passed by the Family Court, Section 18 of the Act which only deals with the execution of the decrees and orders passed by the Family Court, cannot have any application. If so, the only provision which can be applied to such a decree passed by the civil court is Order 21 Rule 10 C.P.C. which reads as under: -
Application for execution -- Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

Thus, it is the court which passed the decree which is to be approached for executing the decree. Indisputably, the court which passed the decree in this case is the Subordinate Judges' Court, Pala where the execution petition (E.P. 19/1997) was pending on the date of establishment of the Family Court for the area. E.P. 19/1997 not being an original proceeding does not attract the statutory transfer u/s 8(c) of the Act. Resultantly, the Sub Court, Pala continues to have jurisdiction to deal with E.P. 19/1997 and bring it to a logical conclusion, notwithstanding the establishment of the Family Court for the area.

8. Judicial pronouncements interpreting the provisions of other statutes, even if they are *pari materia*, cannot be safe guides for construing the provisions of the Family Courts Act. It will be illogical, if not dangerous, to adopt or borrow the interpretation of the provisions of another enactment unmindful of and divorced from the context and purpose of such enactment. For instance, although Section 13 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act 51 of 1993) is a provision almost identical to Section 8(c) of the Act, the said Act 51 of 1993 also contains Section 31-A specifically entitling the Debt Recovery Tribunal to execute an

earlier decree passed by the civil court. Section 31-A of Act 51/1993 makes the position beyond the pale of any controversy and it has been so held by the Apex Court in [Punjab National Bank, Dasuya Vs. Chajju Ram and Others](#), . Moreover, the word "debt" in that enactment includes a decree debt for the recovery of which an application u/s 17 of that enactment can be made. All that apart, what Section 31 of that enactment contemplates is "suits or other proceedings" whereas Sections 7 and 8 envisage only "suits or proceedings" and not other proceedings. In Devaki's case (1997 (2) KLT 746) while holding that after the establishment of the Family Court that Court alone can deal with an application for setting aside the exparte decree passed by the civil court the Bench has not considered whether it is possible for the Family Court to arrive at the requisite satisfaction under Sub-rule (1) and the two provisos to Sub-rule(1) of Rule 13 of Order 9 C.P.C when the records of the case are before the civil court. Any way, in this case we are only concerned with the fate of a pending execution petition u/s 8(c)(i) of the Act. The legislative intendment and object behind a particular enactment cannot be lost sight of by the Courts while construing its provisions. It is not discernible either from the statement of objects and reasons or from the provisions of the Act itself that the Legislature wanted the Family Court to execute even the decrees and orders passed by the civil court prior to the establishment of the Family Court. In this view of the matter, we do not consider ourselves persuaded to disagree with the view taken by another Division Bench in [Joseph Vs. Marium Thomas](#), although the reasoning therein drawing sustenance from Section 18 of the Act may not be the only one in support of the conclusion reached therein.

What emerges from the above discussion is that the execution petition filed as E.P. No. 19/1997 in O.S. No. 675/1994 on the file of the Subordinate Judges' Court, Pala and pending before that court was not liable to be transferred to the Family Court, Kottayam consequent on the establishment of the Family Court with effect from 19-9-1998. If so, it is perfectly legal for the Sub Court, Kottayam to continue to deal with the said execution petition. If so, the prayer in this Writ Petition is misconceived and cannot be granted. We, therefore, dismiss this Writ Petition, but without any order as to costs.