

Radhika Jaiswal and Ayesha Fatima@ Hajara Vs The State of Andhra Pradesh, Sahabzada Mir Masood Ali Khan and The Family Court Judge

Court: Andhra Pradesh High Court

Date of Decision: July 15, 2013

Acts Referred: Family Courts Act, 1984 â€” Section 7, 8
Guardians and Wards Act, 1890 â€” Section 6

Citation: AIR 2014 AP 50 : (2013) 5 ALD 300 : (2013) 5 ALT 745

Hon'ble Judges: Noushad Ali, J

Bench: Single Bench

Advocate: V. Ramchander Goud, for the Appellant; Shabzada Mir Masood Ali Khan (Party-in-Person), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Noushad Ali, J.

This Writ Petition is filed seeking a prohibition against the Family Court, Hyderabad from proceeding with O.P. No. 116

of 2012 filed by the 2nd respondent on the ground that the Family Court has no jurisdiction and the O.P. is not maintainable. The facts to the

extent relevant for the disposal of this writ petition are adverted in this order.

2. The petitioner is married to Respondent No. 2 on 20.02.2006. A female child was born to them on 19.07.2007, who has been given the name

as Fahem Fathima. The baby is also said to have been given the name as Muskan Jaiswal.

3. At the time of marriage, the petitioner is said to be a Muslim by conversion. It appears that in course of time, differences developed between

them since 2008. The petitioner alleges that she was subjected to torture and harassment for the sake of dowry. For a brief period, she left the 2nd

respondent and joined her parents. Again she joined the company of the 2nd respondent from 24.06.2008. The petitioner once again left him and

came back to her parents' house on 28.07.2008. The petitioner claims that she was re-converted to Hinduism on 29.08.2008. In the

circumstances, she filed O.P. No. 27 of 2012 on the file of the Family Court, City Civil Court, Hyderabad, to declare the marriage as null and

void. The 2nd respondent also filed O.P. No. 116 of 2012 for custody of the minor child and obtained certain interim orders, including the one in

I.A. No. 519 of 2012 in O.P. No. 116 of 2012, dated 18.7.2012, wherein the 2nd respondent was permitted custody of the minor child for a day

on 19.7.2012 between 4-00 p.m., and 7-00 p.m. It is stated that the said order is under challenge in C.R.P. No. 3119 of 2013.

4. On the basis of the aforesaid facts, this writ petition is filed to interdict the proceedings in O.P. No. 116 of 2012 filed by the 2nd respondent

herein by issuance of a Writ of Prohibition.

5. Sri V. Ramchander Goud, learned counsel appearing for the petitioner would contend that the Family Court has no jurisdiction to entertain the

O.P. and grant the relief claimed by the 2nd respondent. According to the learned counsel, the relief regarding the custody of minor child is

encompassed u/s 6 of the Guardians and Wards Act, 1890 (for brevity "the Act"), which provides that power to appoint a guardian is regulated by

law to which the minor belongs to. Therefore, according to the learned counsel, the Family Court's jurisdiction is ousted to deal with an application

for guardianship.

6. I am unable to agree with the said contention. The jurisdiction of the Family Court is conferred in Section 7 of the Family Courts Act, 1984.

Section 7 of the said Act reads that subject to the other provisions of the 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.

7. The Explanation thereto provides that the suits and proceedings referred to in this sub-section are suits and proceedings of the following nature,

namely

(a) to (f).....

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

8. The said provision is unambiguous and has conferred power on the Family Court established under the said Act and all the powers exercisable

by District Court in respect of such matters are made exercisable by the Family Court. Family Courts are brought on par with the District Courts

and are specifically conferred with the powers exercisable by those Courts. Therefore, the Family Court has the jurisdiction to entertain an

application filed for custody of the child as contemplated under the Act.

9. Further-more, where a Family Court has been established for any area, no District Court or Subordinate Court referred to in sub-section (1) of

Section 7 of the Family Courts Act is authorized to deal with the matter. Therefore, the jurisdiction vested in other Courts is excluded by virtue of

Section 8 of the said Act.

10. The aforesaid provisions clearly demonstrate that it is the Family Court alone, which is competent to deal with the matter in question. The

contention of the learned counsel for the petitioner that the jurisdiction of the Family Court is ousted u/s 6 of the Act is misconceived. What all

Section 6 of the Guardians and Wards Act states is that in case of a minor, the Act does not take away or derogate from any power to appoint a

guardian, which is valid by law to which the minor is subject. Therefore, the contention that the jurisdiction of the Family Court is ousted because

of Section 6 of the Act is not sustainable.

11. For the aforesaid reasons, this writ petition is misconceived and it is accordingly dismissed. No order as to costs. It is made clear that this

Court has not expressed any opinion on the merits of the case. In view of the disposal of the writ petition, W.P.M.P. Nos. 31557, 43657 and

43658 of 2012 and 22298 of 2013 are dismissed as unnecessary.