

(2002) 12 AP CK 0027

Andhra Pradesh High Court

Case No: Transfer C.M.P. No. 362 of 2002

Shaikh Abdul Haq

APPELLANT

Vs

Durdana Qaiser

RESPONDENT

Date of Decision: Dec. 26, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 24
- Family Courts Act, 1984 - Section 20, 7

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: Gulam Mustafa Rabbani, for the Appellant; Basith Ali Yavar, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

Heard Sri Gulam Mustafa Rabbani and Sri Basith Ali Yavar, the learned counsel representing the respective parties.

2. The Transfer C.M.P. is filed u/s 24 of CPC praying for the transfer of suit O.S. No. 208 of 2000 on the file of the Family Court at Hyderabad to the 5th Senior Civil Judge, City Civil Court, Hyderabad to be tried with O.S. No. 513 of 2001 on the file of the said court and for further orders.

3. The facts in brief are as follows:

It is stated that the petitioner is the owner of the double storeyed building bearing municipal No. 16-2-741/B/50/A/12 at Asmangadh, Malakpet, Hyderabad. It is further stated that the respondent was his wife and she had executed a registered gift settlement deed dated 23.5.1996 gifting the aforesaid property by registered document No. 907 of 1996 and he had also paid to the respondent towards market value of the property thereafter and had constructed the first floor. It is further stated that he had spent an amount of Rs. 2.00 lakhs for making such construction.

It is also stated that the respondent was the wife of the petitioner and without any reasons she was quarrelling with him and harassing him and she was not dutiful and was not performing her marital duties and hence the petitioner divorced her on 8.7.2000. Subsequent to divorce, the respondent filed a suit for cancellation of the registered gift settlement deed dated 23.5.1996 in O.S. No. 208 of 2000 before the Family Court, against the petitioner. Subsequent thereto, despite the divorce the respondent began interfering with the possession of the petitioner relating to the aforesaid property and hence the petitioner filed a suit for declaration and perpetual injunction in O.S. No. 513 of 2001 on the file of 5th Senior Civil Judge, City Civil Court, Hyderabad, relating to the self same property certain other details also had been explained and ultimately relief is prayed for seeking transfer of the suit pending on the file of Family Court to be tried along with the suit filed by the petitioner on the file of 5th Senior Civil Judge, City Civil Court, Hyderabad on the ground of avoiding conflicting judgments.

4. Sri Gulam Mustafa Rabbani, the learned counsel representing the petitioner had submitted that the subject matter of both the suits being one and the same, to avoid conflicting judgments, both the suits are to be tried by one and same court. The learned counsel had drawn my attention to the relevant allegations made in this regard in the affidavit filed in support of the Transfer C.M.P. On the contrary, Sri Basith Ali Yavar had contended that the remedy of transfer prayed for by the petitioner is a misconceived remedy and most probably thinking that a divorced wife will not fall within the expression "parties to marriage" under the Family Courts Act, 1984, this transfer C.M.P. is filed by the petitioner-husband. The learned counsel also submitted that it is no doubt true that the subject matter of both the matters is one and the same though the reliefs claimed for are different. But, however, in view of the decision of the division bench in A. Mannan Khan Vs. Judge and Family Court, Hyd., A.P. and another, the suit pending on the file of the 5th Senior Civil Judge has to be necessarily transferred to be tried along with the suit pending on the file of the Family Court.

5. Heard both sides and perused the material available on record.

6. The relevant portion of Section 7 of the Family Courts Act, 1984 reads as hereunder:

"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)

Explanation:- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a).....

(b).....

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them."

7. In the decision reported *supra*, the Division Bench of this court while dealing with Section 7(1)(c) of Family Courts Act, 1984 has arrived at a conclusion that a suit filed by a divorced wife claiming the matrimonial house in which she along with her husband used to live prior to the dissolution of their marriage, such suit is maintainable in a Family Court. "Parties to marriage" include divorced parties also. Section 20 of the Family Courts Act, 1984 deals with the overriding effect. Apart from this aspect in the matter, it is not in dispute that the Family Court is having jurisdiction to entertain the suit filed by the respondent. It is also pertinent to mention that the other suit filed by the petitioner for declaration of title and perpetual injunction in O.S. No. 513 of 2001 is also within the limits of the city and the same is pending on the file of 5th Senior Civil Judge, City Civil Court, Hyderabad. It is needless to say that to avoid conflicting decisions, it may be just and necessary that both suits are to be tried by one and the same court.

8. In view of the facts and circumstances of the case, I am of the considered opinion that the suit O.S. No. 513 of 2001 on the file of 5th Senior Civil Judge, City Civil Court, Hyderabad be withdrawn and transferred to the Family Court, Hyderabad to be tried along with O.S. No. 208 of 2000 pending on its file in the interest of justice, in the light of the provisions of the Family Courts Act, 1984.

9. The Transfer C.M.P. is ordered accordingly.