
N. Kanageswary Vs T. Shrikandarah Rubindranathan

O.S.A. No. 70 of 2012

Court: Madras High Court

Date of Decision: Dec. 4, 2012

Acts Referred:

Family Courts Act, 1984 " Section 7, 7(c), 8

Citation: (2013) 1 CTC 165 : (2013) 2 DMC 421

Hon'ble Judges: R. Banumathi, J; K.K. Sasidharan, J

Bench: Division Bench

Advocate: C.A. Theagarajan, for the Appellant; G. Ilangovan, for the Respondent

Final Decision: Dismissed

Judgement

K.K. Sasidharan, J.

Whether the Original Side Jurisdiction of the High Court to decide the property dispute between the spouses is

ousted by Sections 7 & 8 of the Family Court Act, 1984, is the core issue that arises for consideration in this intra-Court Appeal.

The facts:

The Appellant married the Respondent on 24th February 1993 in accordance with the custom prevailing among the Hindus. Thereafter, difference

of opinion arose between the parties resulting in filing a Divorce Petition by the Appellant before the Family Court in O.P. No. 1314 of 2004. The

Respondent remained ex parte in the said proceedings. Accordingly, the Principal Family Court was pleased to grant a decree of divorce on 25th

October 2004 in O.P. No. 1314 of 2004, dissolving the marriage between the Appellant and the Respondent.

2. The Respondent thereafter filed a Civil Suit in C.S. No. 1081 of 2007 before the Original Side of this Court against the Appellant praying for a

decree of Partition of the residential flat into two and for allotment of one share to him. The Appellant filed a Written Statement dated 29th June

2009 disputing the claim made by the Respondent. According to the Appellant, there was no contribution from the Respondent for the purpose of

purchasing the flat. The Appellant contended that the entire sale consideration was paid by her and considering the relationship between the

parties, the flat was registered in joint name. Accordingly, the Appellant prayed for dismissal of the Civil Suit.

3. The Appellant thereafter filed an Application in Diary No. 20369 of 2009 in C.S. No. 1081 of 2007 with a prayer to transfer the Suit to the

Family Court at Chennai for trial.

4. The Appellant in the Affidavit filed in support of her Application submitted that after the commencement of the Family Courts Act, Civil Court

has no jurisdiction to try property disputes between the spouses and the Family Court alone was conferred with the exclusive jurisdiction to decide

the family disputes, including disputes relating to property.

5. The Application was opposed by the Respondent by filing Counter Affidavit. According to the Respondent, the marriage came to an end on

account of the decree passed by the Family Court and as such, there is no marital relationship of Husband and Wife between the parties. The

Respondent further contended that the Suit was taken up for trial and only after examining the witnesses on his side, the Application was filed

presumably to drag on the proceedings.

6. The learned Single Judge found that the property was valued more than Rs. 25,00,000/- and as such, High Court alone has got jurisdiction to

try the Suit. The learned Judge was of the view that even in case it is made out that the Family Court has jurisdiction, it cannot be said that the said

Court alone has got the exclusive jurisdiction. In short, the learned Judge was of the view that the High Court has got concurrent jurisdiction to try

property dispute between the spouses and as such, there was no merit in the Application. Accordingly, the Application was dismissed. Feeling

aggrieved, the Appellant is before us by way of this Original Side Appeal.

The Arguments:

7. The learned Counsel for the Appellant, by placing reliance on Sections 7 & 8 of the Family Court Act, 1984 and the Judgment of the Supreme

Court in K.A. Abdul Jaleel Vs. T.A. Shahida, , contended that the Family Court alone has got exclusive jurisdiction to decide the property dispute

between the parties. According to the learned Counsel, Section 7(c) of the Family Court Act gives exclusive jurisdiction to the Family Court to try

Suits or proceedings between the parties to marriage, with respect to the property of the parties or either of them. According to the learned

Counsel, while considering a matter of this nature, the Court should take into account the objects and reasons which weighed with the Legislature

to enact the Family Courts Act. The learned Counsel further contended that in case the matter is transferred to the Family Court, there would be a

conciliatory process and there is every possibility of settling the matter.

8. The learned Counsel for the Respondent by placing reliance on the judgment of a Full Bench of this Court in Mary Thomas Vs. Dr. K.E.

Thomas, and in the light of Section 8 of the Family Courts Act, contended that the jurisdiction of the Chartered High Court has not been taken

away by the Family Courts Act and as such, the learned Single Judge was fully justified in rejecting the Application for transfer of Suit.

Discussion:

9. The marriage between the Appellant and the Respondent was dissolved by a decree of divorce by the Family Court as per judgment and

decree dated 16th June 2004 in O.P. No. 1314 of 2004. Therefore, there is no marital relationship between the Appellant and the Respondent.

The Respondent filed a Civil Suit in C.S. No. 1081 of 2007 for partition of property. The Suit was filed long after the decree of divorce. The

Respondent claimed that the flat in question was purchased by him out of his own funds. However, the document was executed in the joint name of

the spouses,. The Respondent contended that he is entitled to half share in the property. It was only in the said factual background, the Suit was

filed. The Appellant resisted the suit on various grounds. According to the Appellant, the flats were in fact promoted by her brothers and on

account of close relationship, one flat was given to her at a Concessional rate. She also contended that the entire value of the flat was paid only by

her and no amount was contributed by the Respondent. Therefore, the flat in question absolutely belongs to her.

10. Though the Appellant filed a Written Statement way back on 29th June 2009, the Application for transfer of the Suit to Family Court was filed

only after recording evidence on the side of the Respondent.

The core issue:

11. The only issue that arises for our consideration is whether this Court is divested of its jurisdiction to entertain a Suit of Civil nature on account

of Sections 7 & 8 of the Family Courts Act, 1984.

12. It is true that the Family Court is given exclusive jurisdiction in respect of matrimonial disputes. By virtue of Section 7(c) of the Family Courts

Act, Family Court is vested with jurisdiction to try a Suit or proceedings with respect to the property of either of the spouses.

13. Section 8 contains an exclusion clause. The provision reads as follows:

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.

14. The Letters Patent confers jurisdiction to the Chartered High Court in its Civil, Criminal, Admiralty, Testamentary and Intestate jurisdiction.

Clauses 11 & 12 of the Letters Patent specifically vests in the High Court Ordinary Original jurisdiction. The jurisdiction being one conferred on

the High Court expressly by the Letters Patent, it can be taken away only by a specific enactment. There is no question of divesting the High Court

of its original jurisdiction by implication.

15. In Mary Thomas Vs. Dr. K.E. Thomas, , the following question was referred to the Full Bench:

4. whether after the constitution of the Family Court for the Madras area, the Original Jurisdiction of the High Court in respect of matters that may

fall under the Explanation to Section 7 of the Act is ousted or not ?

16. While answering the reference, the Full Bench declared the law in the following terms:

27. We answer the Reference as follows:

After the constitution of the Family Court for the Madras area, the Original Jurisdiction of the High Court in respect of matters that may fall under

the Explanation to Section 7 of the Act is not ousted and the High Court can continue to exercise its jurisdiction notwithstanding the coming into

force of the Family Courts Act, 1984.

17. The issue raised by the Appellant is no more res Integra in view of the judgment rendered by the Full Bench in Mary Thomas Vs. Dr. K.E.

Thomas,

18. There is no dispute that the term ""parties to the marriage"" would include even a divorced Wife. Though Section 8 divests the District Court or

Subordinate Court of its jurisdiction to try any matter involving the property of spouses, the fact remains that the said provision has not taken away

the Original Side Jurisdiction of the High Court under the Letters Patent.

19. The learned Counsel for the Appellant by placing reliance on the judgment i K.A. Abdul Jaleel Vs. T.A. Shahida, , submitted that the Supreme

Court has already concluded that the Suit relating to the property of the spouses should be tried only by Family Court.

20. The issue in K.A. Abdul Jaleel Vs. T.A. Shahida,), was in respect of a Suit filed by a divorced Wife with respect to property, before a Family

Court. The Family Court decreed the Suit and on Appeal, the decree was confirmed by the High Court. When the matter was taken up before the

High Court, it was contended that a divorced Wife would not come under the definition ""Wife"" and as such, the Family Court has no jurisdiction to

entertain the Suit. The Supreme Court negated the said contention and observed that the Family Court has been given jurisdiction to decide the

matters pertaining to the property of spouses or either of them notwithstanding the fact that the marriage was dissolved earlier. The said judgment

would not go to show that the High Court was divested of the Original jurisdiction to take up the matter involving the property of spouses. The

Ordinary Original Civil jurisdiction conferred on the High Court by the Letters Patent was not an issue before the Supreme Court in K.A. Abdul

Jaleel. Therefore, the said judgment would be of no help to the Appellant to decide the question of jurisdiction.

21. There is no dispute that Sections 7 & 8 of the Family Courts Act confer jurisdiction on the Family Court to decide the disputes between the

parties to a matter, including property disputes. In case, proceedings for dissolution of marriage or any other proceeding between the parties are

pending adjudication before the Family Court, it would be in the best interest of both parties to resolve the property dispute also through the said

Court. The Parallel proceedings would cause difficulties to the parties. In case the Matrimonial proceedings are pending before the Family Court

and proceeding relating to property, before the Original Side of the High Court, it would be reasonable to make a request before the High Court to

transfer the Suit to the Family Court. However, it cannot be said that the High Court has no jurisdiction at all to entertain the Suit between the

spouses.

22. The learned Single Judge has rightly held that the High Court has got concurrent jurisdiction with the Family Court and as such, the Suit is

maintainable. We do not find any error or illegality in the said order, warranting our interference. In the up shot, we dismiss the Original Side

Appeal. No costs. Consequently, Miscellaneous Petitions are closed.