

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**CM(M) 1427/2009**

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**Date of decision: 21<sup>st</sup> January, 2010**

**MANITA KHURANA**

**..... Petitioner**

Through: Mr. Vinay Kumar Garg, Advocate

Versus

**INDRA KHURANA**

**..... Respondent**

Through: None

***CORAM :-***

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not?                                | YES |
| 3. | Whether the judgment should be reported in the Digest?                | YES |

**RAJIV SAHAI ENDLAW, J.**

1. This petition under Article 227 of the Constitution of India has been preferred by the defendant in a suit instituted by the respondent/plaintiff and with respect to the order dated 10<sup>th</sup> November, 2009 of the Additional District Judge, dismissing the application of the petitioner/defendant for transfer of the suit to the Family Court in view of Sections 7 & 8 of the Family Court Act, 1984. The counsel for the petitioner was heard on the aspect of issuance of notice of the petition to the respondent on 7<sup>th</sup> December, 2009 and the order reserved; since the suit was listed before the learned Additional District Judge for recording the evidence of the petitioner/defendant on the very next day, vide order of the same day, it was further directed that the learned Additional District Judge shall adjourn the hearing awaiting the orders of this Court.

2. The petitioner/defendant is the daughter-in-law of the respondent/ plaintiff. The respondent/plaintiff has instituted the suit for the relief of ejectment of the

petitioner/defendant from house No.G-1, Pocket-II, Neelgiri Apartments, Naraina Vihar, New Delhi-110028. It is *inter alia* the case of the respondent/plaintiff that she is the owner of the aforesaid house consisting of two bed rooms, drawing room, lobby, kitchen and two W.C.; that the petitioner/defendant was married to the son of the respondent/plaintiff on 12<sup>th</sup> September, 2007; that the son of the respondent/plaintiff was residing with the respondent/plaintiff in the aforesaid house and on marriage, the petitioner/defendant also started living in the same house; that while the son of the respondent/plaintiff was away from India on work, the petitioner/defendant picked up quarrel with the respondent/plaintiff and forced the respondent/plaintiff to leave the house. The respondent/plaintiff claiming to be the absolute owner of the house sued for possession and mesne profits.

3. The petitioner/defendant contested the suit by filing a written statement. It is *inter alia* pleaded that the suit had been filed as a counter blast to the petition filed by the petitioner/defendant under the Domestic Violence Act against her husband as well as against the husband of the daughter of the respondent/plaintiff; that in fact the bedroom allocated to the petitioner/defendant in the house is under lock and a prayer has been made in the proceedings under the Domestic Violence Act to open the locks of the said room; that the petitioner/defendant is not in possession of the entire house; that the respondent/plaintiff had of her own volition left the house by putting locks on the bedrooms and shifted to her daughter's house; that the house was initially allotted in the name of the father-in-law of the petitioner/defendant and upon his demise devolved on the respondent/plaintiff as well as her son i.e. the husband of the petitioner/defendant and the petitioner/defendant has got a right by marriage to stay in the said house.

4. The respondent/plaintiff filed a replication in which she denied that her son had any right, title, interest or share in the said house and also denied that the said house was the matrimonial home of the petitioner/defendant. It was admitted that the house was allotted by the DDA in favour of the husband of the respondent/ plaintiff but it was pleaded that after the demise of the husband in the year 1995, respondent/ plaintiff became the exclusive owner of the property in terms of the mutation letter dated 14<sup>th</sup>

August, 1998 issued by the DDA. It was thus contended that the petitioner/defendant has no right to reside in the said house or any part thereof. It was further informed that another court in a proceeding between the petitioner/ defendant and her husband, had directed the husband of the petitioner/defendant to pay a sum of Rs.30,000/- per month to the petitioner/defendant as maintenance pendente lite.

5. The respondent/plaintiff has already examined herself as a witness in the suit. From her deposition and cross examination, copies whereof have been filed before this Court, it transpires that upon the demise of the husband of the respondent/plaintiff, the house was transferred in the exclusive name of the respondent/plaintiff being the nominee of her husband. In the course of evidence, it has further transpired that the respondent/plaintiff herself was working in the Education Department of the government and retired as a Head Mistress.

6. The petitioner/defendant after the evidence of the respondent/plaintiff had been recorded, made the application aforesaid for transfer of the suit to the Family Court. In the said application it was pleaded that the house, subject matter of the suit, was joint family property and matrimonial home of the petitioner/ defendant; that a petition under Section 11 of the Hindu Marriage Act between the petitioner/defendant and her husband is already pending before the Family Court. It was contended that the instant suit arises out of a marital relationship and the exclusive jurisdiction to try the same was with the Family Court. Needless to state that the respondent/plaintiff contested the application.

7. The learned Additional District Judge vide order impugned in this petition has held that the Family Courts had been set up for settlement of disputes between the husband and wife and not the members of the family outside marriage; that in the instant suit, the husband of the petitioner/defendant was not a party; that the respondent/ plaintiff was claiming possession of the house as the owner and merely because the petitioner/defendant happened to be the daughter-in-law of the respondent/plaintiff, it did not become a matter connected with the marriage of the defendant with the plaintiff's son. It was further held that the ejectment of the petitioner/defendant sought in the suit

was not a matter connected with the marriage of the petitioner/defendant with the respondent/plaintiff's son. The application was accordingly dismissed.

8. The counsel for the petitioner/defendant has referred to the preamble to the Family Courts Act, 1984 which is as under:-

“An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith”.

Reliance is next placed on Section 7 of the Act which is as under:-

**“Section 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.

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

- (a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;
- (b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;
- (c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;
- (d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

- (e) a suit or proceeding for a declaration as to the legitimacy of any person;
  - (f) a suit or proceeding for maintenance;
  - (g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.
- (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise:-
- (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
  - (b) such other jurisdiction as may be conferred on it by any other enactment.”

Section 8 provides that where a Family Court has been established for any area, no District Court or any subordinate Civil Court referred to in Section 7(1) in relation to such area shall have or exercise any jurisdiction in respect of any suit or proceedings of the nature referred to in the Explanation to that Sub-section. Section 8(c) further provides that upon establishment of a Family Court, any proceeding pending immediately before the establishment of such Family Court before any District Court or Subordinate Court shall stand transferred to such Family Court on the date on which it is established.

9. Undoubtedly a Family Court has been established in the area in question and a matrimonial proceeding under Section 11 of the Hindu Marriage Act between the petitioner/defendant and her husband is already pending in the said Family Court. The legal question which arises for adjudication is whether the suit filed by the respondent/plaintiff against the petitioner/defendant is covered by any of the category of suits mentioned in the explanation to Section 7(1) of the Act.

10. The counsel for the petitioner/defendant contends that the petitioner/defendant in her defence to the suit is claiming rights to the house, subject matter of the suit, on the basis of a marital relationship; that if rights spring/emanate from a marital relationship, then the Family Court has exclusive jurisdiction; that though the word “Family” has not been defined in the said Act but the relationship as in this case between the parties is definitely as family members and the Family Court alone would have exclusive jurisdiction. He also relies upon *Allahabad Bank Vs. Canara Bank* (2000) 4 SCC 406 & *R. Venkatakrishnan Vs. Central Bureau of Investigation* 2009 (11) SCALE 102 to contend that for the purpose of determining the question as to whether a special court has the jurisdiction or not, the principal of purposive construction and the mischief rule must be resorted to i.e. (i) What was the law before the making of the Act, (ii) What was the mischief or defect for which the law did not provide , (iii) what is the remedy that the Act has provided and (iv) what is the reason of the remedy; the rule then directs the courts to adopt that construction which suppresses the mischief and advances the remedy. It is further urged that a general law does not prevail over a special law.

11. Before proceeding further, certain other provisions of the Family Courts Act which may have a bearing may be noticed:-

(i) Section 4(3) provides for the qualifications for appointment as a Judge of the Family Court; a preference is required to be given to women and emphasis is placed on legal experience of at least seven years.

(ii) Section 5 provides for framing of rules for the association with a Family Court of institutions or organizations engaged in social welfare or persons professionally engaged in promoting the welfare of the family or persons working in the field of social welfare etc.

(iii) Section 9 enjoins the family court to, in the first instance assess and persuade the parties in arriving at a settlement in respect of the subject matter of the suit or proceeding.

Sub-section 2 thereof empowers the Family Court to adjourn the proceedings for such period as it may think fit to enable the parties to effect a settlement.

(iv) Section 10(3) empowers the Family Court to lay down its own procedure in addition to the procedure prescribed in the Code of Civil and Criminal Procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceeding or at the truth of the facts alleged by one party and denied by the other.

(v) Section 11 enables the proceedings to be held in camera.

(vi) Section 13 takes away the entitlement of a party in a proceeding before the Family court to, as of right, be represented by a legal practitioner.

(vii) Section 14 enables the Family Court to receive as evidence any report, statement, documents, information or matter that may, in its opinion assist it to deal effectively with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

(viii) Section 15 does not make it necessary for the Family Court to record the evidence of the witnesses at length and the Judge of the Family Court is empowered to record a memorandum of the substance of what the witness deposes.

(ix) Section 19 provides for an appeal against the judgment or order of the Family Court to the High Court and provides the limitation for preferring the appeal as 30 days only. The appeals / revisions to any other court except as provided under Section 19 are prohibited and the appeal is to be heard by a Bench of two or more judges.

12. The aforesaid provisions would show that the procedure and the rights of a party in a proceeding before the Family Court are materially different from, if such proceeding had been before the ordinary civil court. The Judge of a Family Court is empowered to adjourn the proceedings for the purpose of settlement and which can lead to delays in the plaintiff getting the relief. The Judge of the Family Court is empowered to devise his/her

own procedure and which may not in consonance with that of an ordinary civil court. The rules of admission and recording of evidence and for preferring the appeal and the rights of appeal/revision are considerably curtailed. In my opinion all these factors will have to be taken into consideration in arriving at a conclusion as to whether a dispute not expressly covered by Section 7 can be held to be so falling within the jurisdiction of the Family Court on the basis of the purposive interpretation suggested by the counsel for the petitioner. The question which also arises is whether when the legislature has not so expressly provided, important legal rights of a party can be taken away by transferring the suit from the civil court to the Family Court.

13. The Supreme Court in *K.A. Abdul Jaleel Vs. T.A. Shahida* AIR 2003 SC 2525 also noticed that the approach of a Family Court is radically different from that adopted in ordinary civil proceedings. It was also held that jurisdiction of a court created especially for resolution of disputes of certain kinds should be construed liberally and a restricted meaning if ascribed to the explanation appended to Section 7 of the Act would frustrate the objects wherefor the Family Courts were set up. On such reasoning, it was held that even after dissolution of the marriage a dispute as to property of the spouses was within the exclusive jurisdiction of the Family Court.

14. The only clause of the explanation to Section 7 of the Act which can be said to bring within its ambit a suit of the nature as in the present case, is Clause (d).

15. What is however significant in the present case is that the husband of the petitioner is not a party to the suit. The Kerala High Court has had occasion to consider whether a suit to which persons other than spouses are a party would continue to be governed by the Family Court Act or not. A Single Judge of the Kerala High Court in *Shyni Vs. George* AIR 1997 Kerala 231 held that merely because a stranger to the marriage (in that case the father-in-law) is also impleaded in the suit along with the husband on the ground that the property of the wife or a portion of it also has been handed over to him would not take away the suit from the purview of the Family Court. It was further held that the jurisdiction of the Family Court is not confined to proceedings

by one spouse against another and that so long as the suit is of one spouse against the other, the suit would be maintainable in the Family Court even if for the purpose of seeking relief in respect of the cause of action put forward in the suit, the suing spouse is forced to implead persons other than the other spouse or include the close relatives of the other spouse. It was further held that the cause of action if common could not be permitted to be split up by filing a suit against the husband in a Family Court and against the father-in-law in the Civil Court. However, in the same judgment, it was observed that a suit for partition in which a party to a marriage claims a share in the property not only along with her husband or as against her husband but also along with the various other members of the joint family would be totally different from a case where a wife files a case for recovery of her exclusive property against her husband and someone else who is holding the property on her behalf like the father-in-law in that case. On the aforesaid reasoning, in *Devaki Antharjanam Vs. Narayanan Namboodiri* AIR 2007 Kerala 38 another Bench of the Kerala High Court held that a suit for partition in which not only the husband and wife but their children were also parties did not fall within the exclusive jurisdiction of the Family Court and as such the decree in the suit passed by the Civil Court could not be held to be void. The reasoning was that the property belongs not only to the parties to the marriage but to others as well. It was further held that where other parties to the suit are merely a proforma party or a party with whom the money or the property of the parties to the marriage or either of them is entrusted or where the third party claims through either or both the parties to the marriage or a legal representative of a party to a marriage or a person in possession of property of the parties to the marriage, notwithstanding such third party being party to the suit, the exclusive jurisdiction to try the suit would still be of the Family Court; however where there is a sharer to the property other than the parties to the marriage, such a sharer could not be compelled to bring a suit for partition before the Family Court merely because the other sharers were married to each other. However, a Division Bench of the Kerala High Court in *Joseph Vs. Marium Thomas* MANU/KE/0034/2006 held that the claim of a stranger over a property over which the wife had a charge for her maintenance was not required to be adjudicated in the Family Court. It was held that Section 7 excludes the jurisdiction of

the civil court only in certain matters which are relating to proceedings between parties to a marriage; however, the claim of a total stranger could not be covered by Section 7 of the Act.

16. A Single Judge of the Bombay High Court in ***Rakhi Vs. Jayendra*** MANU/MH/0799/2008, has held that the Family Courts Act which is a special legislation and creates a forum and mechanism for beneficial and effective enforcement of existing rights cannot be construed to bring within its jurisdiction what was not intended and expressed so. In that case the suit filed by the father-in-law for an injunction restraining the daughter-in-law from entering the house which he claimed to be belonging to him absolutely was held not transferrable to the Family Court.

17. I respectfully agree with the Division Bench of the Kerala High Court and the view aforesaid of the Bombay High Court. The claim of a third party to a marriage even if she be the mother of one of the spouses cannot be adjudicated before the Family Court and to the prejudice, on the aspects noted herein above, as to procedure, appeal, limitation, of such third party. It may be noted that the respondent/plaintiff in the present case is claiming absolute title to the property not as the representative or trustee of the husband of the petitioner/defendant and/or through the husband of the petitioner/defendant but in her own capacity as the widow and nominee of her deceased husband. It is also significant that though the petitioner/defendant is admitted to have been inducted into the suit premises owing to the marriage with the son of the respondent/plaintiff but that is not the cause of action for the suit. The cause of action for the suit is the refusal of the petitioner/defendant to vacate the house of which the respondent/plaintiff claims to be the exclusive owner. Merely because certain facts leading to the cause of action referred to the marital relationship of the petitioner/defendant would not make the suit as one in circumstances arising out of a marital relationship. The language of Clause (d) of Section 7 is peculiar. The words 'circumstances arising out of marital relationship' do not qualify the words 'suit or proceeding' but qualify words 'order or injunction'. Thus, the order of injunction sought

from the court has to be in circumstances arising out of marital relationship. The order sought in the present case of eviction of the petitioner/defendant and of recovery of mesne profits from the petitioner/defendant does not arise out of a marital relationship but arises out of exclusive ownership claimed by the respondent/plaintiff of the property and the occupation thereof by the petitioner/defendant without authority and/or after the authority has ceased.

18. The Supreme Court in *State of Madhya Pradesh Vs. Shobharam* AIR 1966 SC 1910 has held that our Constitution lays down in absolute terms a right to be defended by one's own counsel; it cannot be taken away by ordinary law. Though subsequently in *Lingappa Pochanna Appelwar Vs. State of Maharashtra* AIR 1985 SC 389 it has been held that no litigant has a fundamental right to be represented by a lawyer in any court and where the legislature felt that for implementation of the legislation, it would not subserve the public interest if lawyers were allowed to appear, plead or act, the legislature is entitled to provide so. However, the fact remains that where the legislature has not expressly provided for depriving such right to counsel, the said right cannot be taken away. There is nothing in the Act to show that the legislature contemplated depriving the owner of a property suing for possession of such a right merely because the defendant was her daughter-in-law.

19. As far as the contention of the counsel for the petitioner of purposive interpretation is concerned, the same is to come into play only where the golden rule, that the words of the statute must prima facie be given their ordinary meaning, fails. The Supreme Court in *Harbhajan Singh Vs. Press Council of India* AIR 2002 SC 1351 cited with approval the speech of Lord Simon in *Suthendran Vs. Immigration Appeal Tribunal* (1976) 3 All ER 611 to the effect -- 'Parliament is prima facie to be credited with meaning what is said in an Act of Parliament. The drafting of statutes, so important to a people who hope to live under the rule of law, will never be satisfactory unless courts seek whenever possible to apply 'the golden rule' of construction, that is to read the statutory language, grammatically and terminologically, in the ordinary and primary sense which it bears in its context, without omission or addition. Of course, Parliament is

to be credited with good sense; so that when such an approach produce injustice, absurdity, contradiction or stultification or statutory objective the language may be modified sufficiently to avoid such disadvantage, though no further.'" Yet again in ***Rishab Chand Bhandari Vs. National Engineering Industry Ltd.*** (2009) 10 SCC 601 it was held that only if a literal interpretation leads to absurd consequences, it should be avoided and a purposive interpretation be given. Similarly in ***Raghunath Rai Bareja Vs. Punjab National Bank*** (2007) 2 SCC 230 it was held that the mischief rule and the purposive interpretation rule can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute.

20. I do not find any ambiguity or absurdity in the view herein above taken. No case of nullifying the object of the statute is also found to have been made out. The literal interpretation does not permit the Family Court to have exclusive jurisdiction over the subject matter of the suit in the present case.

21. There is no merit in the petition; the same is dismissed.

**RAJIV SAHAI ENDLAW  
(JUDGE)**

**January 21, 2010**

*gsr*