

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 6948 OF 2008

Kavita Rajiv Zaveri & Ors.

.. Petitioners

Org. Respondent Nos.2, 3 & 4.

Vs.

Smt. Bharti Bipin Shah

.. Respondent No.1

Org. Petitioner

And

The State of Maharashtra

.. Respondent No.2

None for the Petitioners.

Mr. S. D. Rayrikar, AGP for Respondent No.2.

CORAM : M.S.SONAK, J.

DATE : 10th DECEMBER, 2015.

P.C.

1. Heard Mr. Rayrikar for respondent No.2.

2. The challenge in this petition to the order dated 16.08.2008 by which the Family Court at Mumbai has held that it has jurisdiction to entertain and proceed with Petition No. B-51 of 2007 under the provisions of the Family Courts Act, 1984 (said Act).

3. Section 7 of the said Act which deals with the aspect of jurisdiction of the Family Court, reads thus:

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.

4. In this case the petition before the Family Court was filed against the husband. Upon his demise, the petition is continued against the remaining respondents. In this circumstance, even though, the husband may no longer be party to the proceeding, since the cause of action as pleaded had arisen out of marital relationship, the petition before the Family Court was very much maintainable considering the provisions of Explanation (d) to Section 7 of the said Act.

5. There is no jurisdictional error in the impugned order. Therefore, this petition is dismissed. Interim order if any is vacated.

6. The Family Court is directed to dispose of Petition No. B-51 of 2007 as expeditiously as possible and in any case within the period of 6 months from today.

7. Since neither the parties nor their Advocates appeared in this matter, the Registry is directed to transmit the authenticated copy of this order to the Principal Judge, Family Court at Bandra taking up Petition No. B-51 of 2007 within a period of 15 days from today.

8. All concerned to act on the authenticated copy of this order.

(M.S.SONAK, J.)