

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9010 OF 2015

Ashok Rochlani .. Petitioner
vs.
Tejus Kanubhai Maun and ors. .. Respondents

Mr. Vishal Kanade a/w. Ms Manisha Gawde a/w. Mr. E. Moomin for
the Petitioner.
Mr. R.T. Lalwani i/b Mr. Prakash Mahadik for Respondent No.1.

CORAM : M. S. SONAK, J.
DATE : 11 DECEMBER 2015.

P.C. :-

1] The challenge in this petition is to the order dated 14 January 2015, by which the Family Court, at the instance of the Petitioner, has declined to exercise powers under Order 7 Rule 10 of Code of Civil Procedure, 1908 (CPC) and returned the plaint for presentation in the Court in which the suit should have been instituted.

2] The impugned order has been made on Exhibit-132 taken out by the Petitioner in Petition No. B-87 of 2008. The said petition was instituted by Respondent No.1 herein seeking *inter alia* a declaration that the suit premises belong to him and not to the Respondent No.2, who, on the date of institution of the suit, was admittedly his wife. Later on, during pendency of the suit, the parties have obtained divorce. The order granting divorce is also appealed and

the appeal is pending. The Petitioner in this case, was impleaded as Respondent No.3 in Petition No. B-87 of 2008, as, in terms of purported agreement of 25 November 2006, Respondent No.2 herein is alleged to have transferred the suit premises in favour of the Petitioner.

3] Mr. Kanade, learned counsel for the Petitioner, has contended that in terms of explanation 'c' to Section 7 of the Family Courts Act, 1984 (said Act), suit or proceedings under Section 7 of the said Act can lie only between '*parties to a marriage*' and therefore, any suit, in which some stranger or third party came to be impleaded was not even maintainable. Mr. Kanade relied upon the decision of the learned Single Judge of the Andhra Pradesh High Court in case of ***G.Pentamma Vs. G. Anjali***¹, in which, according to him a view has taken that a suit in which any party other than the parties to the marriage have been impleaded, will not lie under the provisions of the said Act.

4] Mr. Lalwani, learned counsel for Respondent No.1, has at the outset submitted that the decision in the case of *G.Pentamma (supra)*, is clearly distinguishable. Because in the said case, there

1 2010 DGLS(AHC) 5463

was record of property having been sold in the year 1988 by the husband to his sisters and by the time, wife instituted the suit, the property had long ceased to be the property of the husband. That apart, Mr. Lalwani submitted a compilation of the judgment, in which, the extreme proposition that the suit under the said Act has to be only between the parties to a marriage has not been accepted. He also relied upon the decision of the Apex Court in case of ***K.A. Abdul Jaleel Vs. T.A. Shahida***², in which, the view has been taken that the expression '*disputes relating to marriage and family affairs and matters connected therewith*' is to be broadly construed.

5] Having heard the learned counsel for the parties, perused the record as also the impugned order, in my judgment, no case is made out to interfere with the impugned order. At least, *prima-facie*, the broad proposition that a suit in which, some party, other than the parties to the marriage has been impleaded, is not maintainable under the provisions of the said Act, cannot be accepted. However, at this stage, it is not at all necessary to express any final opinion in this regard. The suit was instituted in the year 2008. The issues have been framed and even the trial has commenced. The Family Court, has not foreclosed the issue of jurisdiction by the impugned order. In

2 AIR 2003 SC 2525

fact, the issue in relation to the jurisdiction has been specifically cast. The Family Court, in the impugned order, has merely observed that in the facts and circumstances of the present case, even the issue of jurisdiction is a mixed question of law and fact and therefore, it would appropriate if all the issues are considered together at the stage of final disposal of the petition, as by that time, the evidence which may have been led by the parties will be available on record. Such approach is correct and there is really no jurisdictional error or perversity involved.

6] The Petitioner has opportunity to press the issue of jurisdiction, once the evidence is on record. That apart, if ultimately, the petition is decided against the Petitioner herein, the Petitioner will have an opportunity to institute substantive proceedings, both on the aspect of merits as well as jurisdiction. At this stage, no useful purpose will be served by entertaining this petition and stalling the proceedings in the petition, which has been instituted in the year 2008.

7] For all the aforesaid reasons, this petition is dismissed. There shall, however, be no order as to costs.

8] At this stage, Mr. Kanade, seeks for a stay on the proceedings before the Family Court, as the Petitioner desires to take recourse against this order before the Hon'ble Apex Court. Considering that the suit is of the year 2008, I do not deem it appropriate to stay on the further proceedings before the Family Court.

(M. S. SONAK, J.)

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