

2. Petitioner is defendant no.1 who has been shown to be wife of Late Bhagirath Mistry @ Bhagirath Sharma. The suit was filed on behalf of Respondent No.2 as well as Smt. Pinki Sharma, her daughter/plaintiff asking for a relief that they be declared as heirs, successors, representative of late Bhagirath Mistry @ Bhagirath Sharma and are entitled to get all amounts, benefit left by deceased lying in the Lalmatiya Colliery, Eastern Coal Field Limited and for that defendant nos. 2 and 3 be directed



to pay the same, further to direct the defendants to pay the amount in case is found the same paid to defendant nos.1 and 2, for declaration of marriage of defendant no.1 with late Bhagirath Mistry @ Bhagirath Sharma void and not binding upon plaintiff, cost of suit, any relief or relief which the plaintiff is found entitled for before the Sub-Judge-1st, Munger bearing Title Suit No. 57/2002. While the suit was sailing, the Family Court Act, 1984 came into existence whereunder Family Courts were constituted. Identifying the jurisdiction in terms of Section 7 of the Family Court Act, the plaintiff/respondent no.2 filed a petition before learned District & Sessions Judge, Munger for transfer of Title Suit No. 57/2002 to the Court of Family Court and the same was numbered as Miscellaneous (Transfer) Case No. 07/2009. Without hearing the petitioner (defendant) vide order dated 25.03.2010 the same was allowed against which, the petitioner preferred CWJC No. 20701/2010 whereunder the order was set aside and the matter was remitted back to the learned District & Sessions Judge, Munger to pass an order, afresh after hearing both the parties whereupon the aforesaid Miscellaneous (Transfer) Case No. 07/2009 revived. After hearing both the parties, vide order dated 22.11.2012, the learned District & Sessions Judge allowed the transfer petition, which happens to be the subject matter of instant

petition.

3. During midst thereof, as has been submitted by the learned counsel for the petitioner that the learned Principal Judge, Munger proceeded with Title Suit No. 57/2002 in exceptional manner and in spite of having been acknowledged with regard to pendency of instant petition, which the order dated 05.01.2013 does contain, ignored the same, proceeded with the trial and lastly, vide judgment dated 14.01.2013, disposed of the suit in spite of the fact that vide order dated 11.01.2013, passed in present petition further proceeding before the learned lower court was stayed.

4. In the aforesaid facts and circumstances of the case, it has been submitted that once stay was granted earlier to the passing of the judgment, then in that event, not only the presiding officer is guilty for contempt rather the order impugned also suggests to be passed contrary to judicial discipline. That being so, the judgment impugned happens to be nullity in the eye of law. Once, the judgment has become non-recognizable in the eye of law, then in that event, no appeal is permissible nor could be filed. Therefore, the present petition is found entertainable and the same be heard and necessary order be passed as required under law even to the extent of setting aside the judgment dated 14.01.2013.



5. In order to substantiate such plea, it has further been submitted that none of the ingredients so prescribed under Section 7 of the Family Courts Act is applicable in the background of the fact that the proceeding cannot be said to be a dispute relating to marital status of a spouse rather it happens to be a proceeding being fought in between two claimants under the garb of posing themselves to be occupying the same status. Therefore, apart from considering the nature of relief whatever been sought for, the nature of lis suggests applicability of Section 34 of the Specific Relief Act whereupon, the instant suit should not have been transferred to the learned Family Court.

6. Furthermore, it has also been submitted that apart from aforesaid event, the other kinds of deficiency also persist on account of incompetency of the learned lower court. Whenever a dispute arose amongst the parties, with regard to their marital status, it should be amongst the spouse, denoting the husband and wife and not amongst the wives. Here, husband is dead. Two wives, claiming their status to be the first wife which, if recognized in terms of Hindu Marriage Act would be entitled to share, have come into fray whereupon the suit goes out of ambit of Family Court and again adjudication by the Family Court happens to be beyond jurisdiction. At the present juncture, the learned

counsel for the petitioner referred *AIR 2014 AP 29*.

7. Relying upon the case of *Kiran Singh v. Chaman Paswan* as reported in *AIR 1954 SC 340* submitted that judgment passed by a court without jurisdiction is a nullity whereupon disposal of the suit by the learned Principal Judge, Family Court, Munger cannot be considered to be a judgment passed in accordance with law and in likewise manner, by a competent jurisdiction and that being so, disposal of the proceeding cannot be identified to be a hurdle in entertaining this petition as well as disposing of the same. Therefore, it has been submitted that the order dated 22.11.2012 passed by learned District & Sessions Judge, Munger in Miscellaneous (Transfer) Case No. 07/2009, be set aside with a consequential relief by way of setting aside judgment dated 14.01.2013 that trial be proceeded and decided by a court of competent jurisdiction.

8. Learned counsel for the respondents controverted the submission made on behalf of petitioner and submitted that now, after disposal of the Title Suit No. 57/2002, the instant petition has become infructuous.

9. “*Justice delayed is justice denied*” and its synonyms as “*justice hurried is justice buried*” is always to be remembered to keep a balance. From certified copy of order dated 05.01.2013,



it is apparent that the matter has already been brought up to the notice of the Court regarding pendency of CWJC against the order dated 22.11.2012 passed in Miscellaneous (Transfer) Case No. 07/2009. Admittedly, no stay then was. Admittedly, the instant CWJC has not been filed against any order of the Principal Judge, Family Court rather it has been filed against an order by which transfer was made. That means to say, Title Suit had gone to the court of Principal Judge, Family Court after 22.11.2012. Once, the Court has been acknowledged with the fact, then in that circumstance, an opportunity should have been given to pray for stay which was never done. On the other hand, the aforesaid Title Suit has been disposed of on 14.01.2013 even having stay of further proceeding. Whatever the reasons may be, the learned lower court had acted in an unusual manner and so, needs to be properly dealt with, for which office is directed to place the matter before the next Standing Committee meeting.

10. Be that as it may, the present petition happens to be under Article 227 of the Constitution of India wherein power of superintendence is only to rectify the proceeding and if, needed, to set aside the order. In likewise manner, to guide the learned lower court and for that, if needed, an order to this effect could be passed. However, whenever a proceeding terminates by a

judgment and decree which happens to be an appealable judgment/decree, then in that event, the power of superintendence extending its tentacle to overlap and act as an appellate jurisdiction is forbidden.

11. Consequent thereupon, giving a liberty to the petitioner to challenge the judgment dated 14.01.2013 on any other ground including deficiency of jurisdiction, the instant petition is found infructuous and is, accordingly, disposed of. If an appeal is filed within four weeks, then in that event, question of limitation will not be allowed to come in between in the background of peculiar feature of facts of the case.

12. The stay so granted vide order dated 11.01.2013, in the facts and circumstances of the case, has become redundant.

(Aditya Kumar Trivedi, J)

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