

HIGH COURT OF CHHATTISGARH, BILASPUR

FAM No. 50 of 2015

1. Praveen Kumar Jain, Son of Shri Prakashchand Jain, aged about 40 Years, resident of 1st Floor 102 - Radhe Krishna Apartment, Opposite Balaji Hanuman Temple, Raiya Exchange Circle, Rajkot (Gujrat)

---- Petitioner

Versus

1. Smt. Anjali Jain, wife of Praveen Jain, aged About 39 Years, resident of MIG-16 Indrawati Colony, Raipur Chhattisgarh

---- Respondent

For Appellant	:	Shri Raja Ali, Advocate
For Respondent	:	Shri Pawan Kesharwani, Advocate

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board by Pritinker Diwaker, J

17/05/2017

Challenge in this appeal is to the order dated 14.01.2015 passed by Additional Principal Judge, Family Court, Raipur in Case No. 01/2014 rejecting the application filed by the appellant/defendant under Order VII Rule 11 of the Code of Civil Procedure (for brevity "the Code").

2. Facts of the case in brief are that the respondent/plaintiff - the wife of appellant/defendant filed a suit for cancellation of gift deed dated 3.3.2011 and also for grant of injunction. Plaintiff/wife has averred in the plaint that after the dispute cropped up between her and the defendant/husband, the property belonging to her was got gifted from her by the defendant/husband in his name per force, and therefore, he be restrained from transferring the suit property in any manner

whatsoever.

3. During pendency of the suit, an application was filed by the appellant/defendant under Order VII Rule 11 of the Code *inter alia* pleading that the suit filed by the respondent/plaintiff before the Family Court is not maintainable. The main ground taken by the appellant/defendant in this application was that the relationship of husband and wife between them have ceased to exist for last three and a half years; that a case for divorce is already pending and only a formal decree of divorce is to be passed, and therefore, the Family Court has no jurisdiction to try the matter. However, by the impugned order the Family Court has rejected the application filed by the appellant/husband. Hence this appeal.

4. Counsel for the appellant/defendant submits that when a deep consideration of an issue is required to be made, the Family Court has no jurisdiction to hear such matters and the suit should be tried by a Civil Court. He submits that the Family Court has erred in law in rejecting the application filed by the appellant/defendant under Order VII Rule 11 of the Code.

5. Supporting the order impugned it is argued by the counsel for the respondent/plaintiff that as per explanation "c" to Section 7 (1)(b) of the Family Courts Act, the Family Court has jurisdiction to try the suit, and being so the order under challenge in this appeal is in accordance with law. In support of his argument, he placed reliance on the decision of the Apex Court in the matter of **K.A. Abdul Zaleel v. T.A. Shadia** reported in **(2003) 4 SCC 166**.

6. Heard counsel for the parties and perused the documents on record.

7. Explanation “c” to section 7 (1) of the Family Court Act reads as under:

“7. **Jurisdiction.-** (1) Subject to the other provisions of this Act, a Family Court shall-

(a) ...

(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) ...

(b) ...

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.”

A bare perusal of explanation (c) to section 7 (1)(b) quoted above makes it clear that the Family Court has jurisdiction to decide the suit between the parties to a marriage with respect to the property of the parties or either of them. Thus considering the averments made in the plaint as also the decision of the Apex Court referred to above, this Court is of the considered opinion that the Court below has not committed any error of law in rejecting the application filed by the appellant/defendant under Order VII Rule 11 of the Code. Appeal thus being devoid of any substance is liable to be dismissed and it is dismissed as such.

8. As the record of the Court below was summoned by this court, the proceedings before that Court have come to be stalled. Registry is, therefore, directed to send back the original record of the case to the concerned Family Court. On receipt of the said record, the Family Court is directed to decide the suit as expeditiously as possible preferably within a period of six months from the next date of hearing.

Sd/-

(Pritinker Diwaker)
Judge

Sd/-

(RCS Samant)
Judge

Jyotishi