

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

2 FAMILY COURT APPEAL NO. 12 OF 2014

SHIVAJI SUDAMRAO PAWDE
VERSUS
SMT. RADHA HALOI ,D/O LATE HEM CHAND MALI
...
Advocate for Appellant : Mr. Devakate Anant R.
...

**CORAM : S.V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATE : 21.08.2017**

P.C. :-

. The present appellant had instituted a petition before the Family Court, Aurangabad for declaration that the plaintiff and defendant are not having matrimonial status or relationship, so also sought injunction restraining the defendant from claiming marital status with the plaintiff much less status of wife of the plaintiff. The said petition came to be dismissed by the Family Court on the ground of lack of territorial jurisdiction. The said judgment and decree is assailed in the present appeal.

2. Mr. Devakate, the learned counsel for the appellant submits that the appellant is not seeking any declaration with regard to any certificate of marriage or otherwise. The appellant is merely claiming a declaration that marital status of whatsoever nature does not exist

between the plaintiff and the defendant. The petition of the present appellant is perfectly tenable under Section 7 explanation 'D' of the Family Courts Act, 1984. The learned counsel further submits that the petitioner is seeking relief referable to Section 34 of the Specific Relief Act i.e. the relief of declaration with regard to the status. The petitioner at the relevant time of the institution of the petition is resident of Aurangabad. The appellant got the knowledge of the fraud being played upon the appellant at Aurangabad and, as such, the Family Court at Aurangabad has jurisdiction to try and entertain the petition. The learned counsel relies on the judgment of the learned Single Judge of Orissa High Court in a case of **Suresh Chandra alias Tulu Nayak v/s. Smt. Shantilata Bhoi** reported in **AIR 2009 Orissa 14**.

3. While determining the jurisdiction so also territorial jurisdiction of the Court, the pleadings in the plaint would be relevant.

4. The plaintiff in the plaint has alleged about the factum of the defendant herein filing proceedings against him on the basis of some documents from the office of Marriage Officer, Kamrup (Metro), Guwahati and that he got the knowledge of said proceeding when the petitioner was posted at Gujarat. The defendant has instituted proceedings purportedly under Section 125 of Code of Criminal Procedure at

Guwahati. The pleadings of the plaintiff are on premise that marriage was not at all solemnized between the parties and there was no occasion to register the marriage under Chapter III of the Special Marriage Act, 1954. The plaintiff further averred that the defendant by playing fraud got prepared certain bogus documents. The plaintiff had never any relation of marriage with defendant and the story based on imagination is put forth by the defendant in her application for maintenance. The defendant is trying to show relationship of marriage with the plaintiff. The plaintiff, therefore, is forced to file the present suit for declaration.

6. It would be relevant to re-produce certain part of the pleadings in the plaint:

“05. The plaintiff states and submits that he secured information as to proceeding and he learned that defendant had filed F.C. (Crl.) No. 375 of 2012 as per section 125 of the Code of Criminal Procedure, 1973. The plaintiff was unaware about the strategy of the defendant. The plaintiff secured the information as to the application filed against him and shocked to know that defendant had secured certain false and fabricated documents from the office of the Marriage Officer, Kamrup (Metro), Guwahati.

06. The plaintiff states and submits that he also came to know that the defendant had played fraud upon him and claiming marital status with him. There is no any relationship in the nature of marriage between the plaintiff and defendant. The defendant is making attempt to show that there was marriage between her and plaintiff in the year 2009. The plaintiff is young member of armed forces and it is unbelievable to have marriage with a lady having two children and who is more than 42 years old. The age of plaintiff is only 30 years and it is impossible for

him to marry to such old lady as same is impossible in view of social atmosphere prevailing.

07. The plaintiff states and submits that he never executed any document in favour of defendant. The defendant by playing fraud got prepared certain bogus documents. The copies of documents are neither supplied to the plaintiff nor are those available to him. The plaintiff had never any relation of marriage with the defendant and story based on imagination is put forth by the defendant in her application for maintenance. The plaintiff never resided under one roof with the defendant and there was no any sexual relationship with the defendant. In nutshell, the defendant is trying to show relationship of marriage with the plaintiff. The plaintiff, therefore, is forced to file present suit for declaration.

08. The plaintiff states and submits that the defendant pleaded in her petition before the Hon'ble Principal Judge, Family Court, Guwahati that marriage was solemnized in the year 2009. The marriage was not at all solemnized between the parties and there was no occasion to register the marriage under chapter III of the Special Marriage Act, 1954.

10. The plaintiff states and submits that notice of the petition for maintenance filed by the defendant is served upon the plaintiff in the month of November, 2012. The plaintiff obtained necessary information and came to know that the defendant is alleging matrimonial relationship as wife and husband with him. The illegal activities of the defendant are notice by the plaintiff on 23-11-2002 i.e. after receipt of notice of the Hon'ble Principal Judge, Family Court, Guwahati. Thus the cause of action for the present suit is arisen on the same day and is continuing one.

11. The plaintiff states and submits that he is residing in the town Aurangabad for last some years. The plaintiff noticed the activities of the defendant when he was staying at Aurangabad. The cause of action of the suit is arisen at Aurangabad. The plaintiff is residing at Aurangabad when he use to be on leave. Hence this Hon'ble Court is having territorial jurisdiction as

well as jurisdiction to decide the lis between the parties in view of the provisions of the chapter III of the Family Courts Act, 1984.”

7. The Family Court at Aurangabad would assume jurisdiction only if the claim is brought within the purview of the provisions as detailed in Section 7 of the Act, 1984. The Family Court exercises all the jurisdiction exercisable by the District Court or any Sub-ordinate 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.

8. The plaintiff claims that his suit is not invoking the provisions of the Hindu Marriage Act nor invoking the provisions of the Special Marriage Act, then, in that case the jurisdiction of the District Court or any Sub-ordinate Civil Court would be the one as would be detailed in Section 15 to Section 20 of the Civil Procedure Code.

9. In the present matter Section 20 would be relevant. Section 20 reads thus:

“20. Other suits to be instituted where defendants reside or cause of action arises --Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or

personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.”

10. Considering the spectrum of Section 20 in its entirety and the pleadings in the plaint as re-produced (supra). By no stretch, the Family Court at Aurangabad could invest itself with the jurisdiction to try and entertain the suit filed by the present appellant, no part of cause of action has arisen at Aurangabad. It is averred by the plaintiff/present appellant that the defendant has got certain documents and certificate from the Marriage Office at Kamrup (Metro), Guwahati. The proceedings are filed by the defendant at Guwahati under Section 125 of the Criminal Procedure Code. The appellant got the knowledge about the proceedings being filed by the defendant at Guwahati and the alleged fraud when the defendant was posted in Gujarat. No part of cause of action has ever arisen at Aurangabad.

11. The judgment of the learned Single Judge of Orissa High Court in a case of **Suresh Chandra** (supra) would be of no avail, for the

reason that in the said case the Court was considering Section 31 of the Special Marriage Act. The proceedings herein are filed under the provisions of the Family Courts Act invoking the jurisdiction of the Family Court and moreover the appellant is informed of the certificate being relied by the present defendant regarding the marriage at the time he was posted in Gujarat.

12. Even if the arguments and the pleadings are construed liberally the same would not invest the Family Court at Aurangabad with jurisdiction. The concept of cause of action / part of cause of action cannot be extended to such an extent as contended by the appellant. The tribunal has not committed any error while passing the impugned order. Appeal is dismissed. No costs.

[MANGESH S. PATIL, J.]

[S.V. GANGAPURWALA, J.]