

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**FAM No. 92 of 2016**

Bhagwati Devi Khatkar W/o Chaitram Dev, Aged About 55 Years R/o Block Colony, Pamgarh, Tahsil Pamgarh, Police Station And Post Pamgarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh .....Plaintiff, Chhattisgarh

**---- Appellant**

**Versus**

Chaitram Dev S/o Tirathram, Aged About 68 Years R/o Pamgarh, Behind Tahsil Office, Tahsil Pamgarh, Police Station And Post Pamgarh, Civil And Revenue District Janjgir-Champa, Chhattisgarh .....Defendant, Chhattisgarh

**---- Respondent**

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| For Appellant  | : | Shri Manoj Paranjpe, Advocate  |
| For Respondent | : | Shri Shravan Agrawal, Advocate |

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**Division Bench : Hon'ble Mr. Justice Manindra Mohan Shrivastava**  
**Hon'ble Mrs. Justice Rajani Dubey**

**Judgment On Board**

**13/08/2018**

**Per Manindra Mohan Shrivastava, J.**

1. This appeal is directed against the impugned order dated 02.02.2016 passed by learned Family Court, Janjgir, District Janjgir -Champa in Civil Suit No.56-A of 2013 (wrongly mentioned as Miscellaneous Criminal Case No.56-A/2013) by which the learned Family Court has held that it does not have jurisdiction to deal with the issue and at the same time also purported to decide the issue on merits. The issue arising for consideration in this appeal is whether in the matter of dispute between the parties to a marriage, in relation to property, the Family Court would have jurisdiction in terms of provision contained in Section 7 (1) Explanation (c) of the Family Courts Act, 1984 (in short "*the Act*").
2. A brief resume of the relevant facts would be necessary before we embark upon the analysis of the relevant provision and the legality of the impugned order.

3. Appellant herein, the wife, filed an application before the Family Court seeking a relief of declaration that she be declared as joint owner of the land and house in dispute and upon declaration of her title to the extent of half, a declaration of confirmation of her possession and also of injunction be granted against the respondent, that he be restrained from transferring the property by way of sale and further that respondent be restrained from dispossessing plaintiff and her sons from the property in dispute. The reliefs were sought on the pleadings inter alia that the property in dispute was purchased out of the fund which was substantially contributed by the appellant- plaintiff. According to the appellant-plaintiff, she had earned from her employment and a part of her savings was used for purchase of the land and construction of the house, though the land was purchased in the name of husband-respondent.
4. The non-applicant/husband filed his reply opposing the claim and stated that property exclusively belonged to the defendant in his ownership and title. The defendant/non-applicant, however, separately moved an application, substantively under Order VII Rule 11 CPC, raising issue of jurisdiction by submitting that the Family Court does not jurisdiction to deal with the nature of dispute raised by the plaintiff/applicant because it relates to a property.
5. By the impugned order, learned Family Court held that it does not have jurisdiction to deal with the nature of dispute and it cannot grant a decree of declaration in respect of the property in dispute. Curiously enough, learned family Court at the same breath, without issues having been settled and even the parties having not been allowed to lead oral and documentary evidence, also recorded finding on the merits of the case.
6. On the aspect of jurisdiction of the Family Court, learned counsel for the appellant argues before this Court that the family Court has been expressly conferred jurisdiction to entertain the suit or proceedings between the parties to a marriage with respect to the property of the party or either of them, under Explanation (c) to Section (7) (1) of the Act. It is argued that on a plain and literal reading of the said provision, there is nothing to show that to attract jurisdiction of the Family Court, the property dispute

between the parties to a marriage should necessarily be a part of any other dispute of marital status. He would submit that the legislature intended to confer jurisdiction on the Family Court even in respect of family dispute where the parties to the dispute are under marital relationship. He would further contend that the object of the legislation is to create a forum for settlement of family disputes. Therefore, the provision must receive broad liberal interpretation and not restricted one. He would also argue that express provision, once made in the statute, must be given full meaning and in the absence of there being any other fetter on exercise of jurisdiction, it is not necessary for the plaintiff-appellant to seek any other kind of relief specifically arising out of marital relationship like decree of divorce or restitution of conjugal rights or any other right arising out of matrimonial relationship. In support of his contentions, he places reliance upon the decision of the Supreme Court in the case of **K.A. Abdul Jaleel Vs. T.A. Shahida** (2003) 4 SCC 166 and several other authorities of various High Courts.

7. On the merit aspect of the case, intervention of this Court is fervently urged on the submission that the Family Court could not have gone into merits of the case while deciding application under Order VII Rule 11 CPC because neither the issue were framed nor the parties were allowed to lead oral and documentary evidence. He would further place reliance in the case of **Kuldeep Singh Pathania Vs. Bikram Singh Jaryal** (2017) 5 SCC 345. It is submitted that despite reiteration of the settled legal position that for the purpose of deciding as to whether suit is barred by law, plaint statement alone should be looked into, learned Family Court has decided the merits of the case also while holding that it does not have jurisdiction. Therefore, it is prayed that the impugned order may be set aside.
8. Per contra, learned counsel for the respondent/non-applicant would argue that the creation of Family Courts under the Family Courts Act was intended to adjudicate upon issue arising out of or in connection with marriage. Unless the parties seek judicial intervention of the Family Court on any of the matters concerning their marital relationship, for pure and simple property dispute, merely because it is between the husband and wife, without anything more, would not give the Family Court, jurisdiction.

In his submission, Explanation (c) to Section 7 (1) of the Act has to be interpreted in that manner alone, otherwise it will be out of context of the very object and purpose of establishing Family Courts. He would further submit that the plaintiff-applicant has not only sought relief for herself but also for her married sons, the Family Court has no jurisdiction to deal with the rights of the sons and for this additional reason also, the Family Court would have no jurisdiction. In support of his submission, he places reliance on the decision in the case of **G. Pentamma & Ors. Vs. G. Anjali W/o G. Raghurameshwar Rao & Anr.** (AIR 2010 AP 224).

He would further argue that otherwise also, the plaintiff did not have any cause of action and this was also in the mind of the of Family Court to allow application under Order VII Rule 11 CPC and reject the plaint.

9. We have considered the rival submissions made by learned counsel for the parties and perused the records of the Court below.
10. In order to answer as to whether the Family Court constituted under the Family Court Act would have jurisdiction to deal with property dispute, if it exists between the parties to a marriage and if so, whether such jurisdiction is conditioned upon existence of any other issue coupled with property dispute, it will require examination of the scheme of the Act.
11. The object and reason of the Act reveal, that it seeks to provide for the establishment of the Family Courts with a view to promote conciliation in and secure speedy settlement of disputes relating to marriage and family affair and for matters connected therewith. The Act seeks to establish Family Court to deal with suits and proceedings of the nature referred to under Section 7 of the Act. The provision contained in Section 7 of the Act being relevant, is reproduced herein-below:

**“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 circumstance 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.”

12. Upon scanning the anatomy of the provision, we find that the legislature intended to confer a very wide jurisdiction on the Family Courts in respect of the matters expressly provided from small (a) to small (g). In addition to the above, sub-section (2) of Section 7 also confers jurisdiction on the Family Court in respect of those which are otherwise exercisable by a Magistrate of the First Class in the matter of order for maintenance of wife, children and parents, as provided under the Code of Criminal Procedure. Not only this, in legislative wisdom, an enabling clause has also been inserted to confer jurisdiction on the Family Court which are otherwise specifically not provided under the Act. This is intended to make the legislation a comprehensive one to cater to needs of time in future.

13. While clauses (a), (b), (d), (e), (f) and (g) under Explanation to Section 7 (1) indicate that the nature of dispute has something to do with the dispute arising out of some kind of matrimonial dispute or claim of maintenance or for declaration as to legitimacy of any person and also with regard to guardianship, custody or access to any minor, clause (c), as we perceive, is peculiar, in the sense that it confers a jurisdiction on the Family Court to decide a property dispute, if such a dispute is between the parties to a marriage. Use of the words “parties to a marriage” is clearly indicative of the disputes between the husband and the wife. Further, the language “with respect to the property of the parties or of either of them” is of a very wide connotation and embraces in it, all kinds of possible dispute involving property where the property either happens to be of the parties i.e. parties to a marriage or even when it belongs to either of them. On such literal reading of the provision, the legislative intention of conferring on Family Court, jurisdiction in respect of disputes relating to property, as between the parties to marriage, is reflected. In this clause, we do not find that in order to confer jurisdiction on the Family Court where there exists a dispute with respect to any property belonging to the parties to a marriage or to any of them, it must necessarily be coupled with a dispute of any

other nature referred to in any of the clauses (a), (b), (d), (e), (f) and (g). Illustratively, if there is a dispute as to who is the title holder of the property between the parties to a marriage, in order to confer jurisdiction on the family Court, it is not necessary that the Family Court is called upon to decide whether the parties are entitled to any decree of divorce or restitution of conjugal rights or coupled with a dispute with regard to legitimacy, guardianship custody etc. The provision, read as it is, confers jurisdiction on the Family Court to deal with property dispute where the dispute happens to be between the parties to a marriage and no other kind of dispute is required to be raised to confer jurisdiction on the Family Court.

14. It may sound little unusual, as has been put forth by learned counsel or the respondent, that the Family Courts have been created to deal with matrimonial dispute or custody dispute, why should clause (c) of the Explanation be interpreted to the extent that even pure property dispute between the husband and wife should be brought only before the Family Court and not any other Court.

The answer to this lies in the object of enactment itself and the special procedure for settlement of dispute which otherwise is not available to be applied in ordinary proceedings before the Civil Court.

15. The object of establishing a Family Court is to promote conciliation in dispute relating to marriage or family affairs and to secure speedy settlement thereof. The insistence on settlement is a peculiar feature of the Act. The object of the legislation is to first make an effort to bring about a settlement between the parties to a marriage. Section 9 of the Act casts duty on the Family Court to make efforts for settlement, once the matter is brought to the jurisdiction of the Family Court. Such kind of duty may not be there on the Courts while dealing with such dispute between the parties other than husband and wife. This indeed provides the basis to hold that where dispute between the parties to a marriage is simple dispute of property, then also, legislature intended to confer jurisdiction on the Family Court and its establishment, to exclude jurisdiction of other Courts. Even if there is a simple property dispute between the husband and wife, the Family Court has to first make an effort to bring about settlement between

the parties. It is only when all the efforts fail that the process of adjudication will start. Therefore, irrespective of whether the dispute between the parties to a marriage arises out of marital relationship or is a simple property dispute, in all the cases, the Family Court will be under an obligation to first work out settlement between the parties in the spirit of Section 9 of the Act. If the legislature intends that all kinds of dispute between the parties to a marriage, including a property dispute should only be dealt with by the Family Court, we do not find any reason to unduly restrict the plain meaning of the provision contained in clause (c) of the Explanation of Section 7 (1) of the Act and condition it by reading something else which is not there.

16. For reasons stated above, we are of the firm view that apart from literal reading of the provision, as it is, it advances the object and enactment also because it relates to matter of dispute between the parties to a marriage and even when there exists a property dispute between the husband and wife, a special procedure has been provided and a separate forum has been created under the Act which is intended to bring about settlement between the parties to a marriage and if, ultimately settlement does not happen, then to provide speedy settlement of case. The objects of conciliation and settlement are advanced if the provision is read as it is rather than diminishing its effect by reading into it something else.

17. In almost similar factual background, in the case of **K.A. Abdul Jaleel** (supra), the Supreme Court had an occasion to examine the scheme of the Act with particular reference to the jurisdiction of the Family Court in respect of the suit and proceedings in the nature of what has been provided under clause (c) of the Explanation. The background of the dispute in which, occasion arose for examination of the statutory scheme, was as below:

“4. In respect of properties an agreement marked Exhibit A1 was executed by the parties, in terms whereof it was agreed that the properties purchased from the aforesaid amount will be transferred in the name of the respondent by the appellant. The appellant herein pronounced Talaq on 01.11.1995 after his relationship

with the respondent became strained. In terms of the said agreement dated 17.09.1994, the respondent filed a suit marked O.S. No.85 of 1995 in the Family Court on 08.12.1995. The appellant in his written statement alleged that the said agreement was signed by him under threat and coercion and further contended that several documents purported to have been executed by him in support thereof were also obtained by applying force.

In the aforesaid background, their Lordships in the Supreme Court interpreted provision of the Family Court to hold thus:

“10. The Family Courts Act was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. From a perusal of the Statement of Objects and Reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them. Section 7 of the Act provides for the jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto. Explanation (c) appended to Section 7 refers to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

11. The fact of the matter, as noticed hereinbefore, clearly shows that the dispute between the parties to the marriage arose out of the properties claimed by one spouse against the other. The respondent herein made a categorical statement to the effect that the properties were purchased out the amount paid in cash or by way of ornaments and the source of consideration for purchasing the properties described in Schedules 'A' and

'B' of the suit having been borne out of the same, the appellant herein was merely a trustee in relation thereto and could not have claimed any independent interest thereupon. It is also apparent that whereas the agreement marked as Exhibit A1 was executed on 17.09.1994, the appellant pronounced Talaq on 01.11.1995. The wordings 'disputes relating to marriage and family affairs and for matters connected therewith' in the view of this Court must be given a broad construction. The Statement of Objects and Reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise."

Not only that, their Lordships also held that giving restrictive meaning to the words "a suit or proceedings between the parties to a marriage as parties to subsisting marriage" would lead to miscarriage of justice by observing thus:

"12. The submission of the learned counsel to the effect that this Court should read the words "a suit or proceeding between the parties to a marriage" as parties to a subsisting marriage, in our considered view would lead to miscarriage of justice.

13. The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings. The said Act was enacted despite the fact that Order 32A of the Code of Civil Procedure was inserted by reason of the Code of Civil Procedure (Amendment) Act, 1976, which

could not bring about any desired result.

14. It is now a well-settled principle of law that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) appended to Section 7 of the Act, in our opinion, would frustrate the object wherefor the Family Courts were set up. “

18. In view of the aforesaid authoritative pronouncement of the Supreme Court specially with regard to jurisdiction of the Family Court in respect of the matters covered under clause (c) of Explanation to Section (7) (1) of the Act, we have no hesitation to hold that Family Court did have jurisdiction to deal with the suit brought before it by the appellant.

19. Learned counsel for the respondent has placed heavy reliance on the decision in the case of **G. Pentamma** (supra). In that case, observations made in another decision in the case of *P. Srihari Vs. P. Sukunda*, (AIR 2001 SC 169) were relied upon. The dispute therein was not confined to the parties to a marriage. The said judgment is clearly, therefore, distinguishable. We also note that in aforesaid decision, the Supreme Court's decision in the case of **K.A. Abdul Jaleel** (supra) was also referred to and relied upon.

20. We are shocked more than surprised, to see that learned Family Court, while deciding an application under Order VII Rule 11 CPC has not only held that it does not have jurisdiction but at the same breath, has also touched upon merits of the case and recorded certain emphatic findings which, in our opinion, was wholly uncalled for as the Family Court, at that stage of proceedings, had absolutely no occasion to deal on the merits of the case.

21. Lastly, we must express ourself to reject at the threshold, the argument of learned counsel for the respondent that the proceedings before the Family Court were not maintainable for want of cause of action. From the plain reading of respondent's application under Order VII Rule 11 or from

reading of the order of learned Family Court, we do find that there was anything to even remotely suggest that this issue was raised or decided.

22. We need to clarify one aspect. The suit has been by the plaintiff-applicant and her sons are neither plaintiff nor respondent. The relief sought in the plaint is principally by the plaintiff-wife for herself and should not be treated to be a suit either by her sons or a suit in representative capacity because the sons are admissibly major and there is nothing to show that for reasons of unsoundness of mind or illness or for any legally permissible ground, the plaintiff sought to file the suit as next friend of major sons.

23. In the result, the impugned order cannot be sustained and is, therefore, set aside. The case is remanded to the Family Court to allow completion of pleadings, frame issue and decide the matter on its own merits, in accordance with law, after affording the parties to lead oral and documentary evidence.

24. The appeal is accordingly partly allowed.

Sd/-  
**(Manindra Mohan Shrivastava)**  
Judge

Sd/-  
**(Rajani Dubey)**  
Judge