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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 204/2014 & CM APPL. 12149/2014, CM APPL. 44031/2016**
MADHO SINGH CHAUHAN

..... Appellant

Through: Mr. S.S. Jain, Advocate.

versus

SMRITI & ORS

..... Respondents

Through: Mr. Kumar Sunil, Advocate and Mr.
Mani Shanker, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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30.01.2018

The appellant and respondent no. 1 have been in an estranged marriage for sometime and the proceedings between them are pending before the Ld. Family Court for the past decade and a half. In the year 2008, the appellant filed the suit seeking following reliefs:-

“a) pass the decree of mandatory injunction in favour of the plaintiff and against the defendants No. 1 to 4, their servants, agents, attorneys, representatives, successors, assignees etc. etc. directing them to remove themselves along with their belongings forever from the suit premises i.e. second, third floors and roof of premises No.J-77, Saket, New Delhi as shown in colour red of the site plan thereof filed herewith, in alternative pass a decree of possession in respect thereof in favour of the plaintiff and against the said defendants jointly and severally : and

b) to pass a decree of recovery of damages amounting to RS.85,000/- as against RS.86,933/- calculated @ Rs. 16,000/- p.m. for the period w.e.f. 1.5.2008 till date of filing the present suit for unauthorized use and occupation of the suit premises, in favour of the plaintiff and against the defendants No. 1 to 4

jointly & severally : and

c) to pass a decree of mesne profits in favour of the plaintiff and against the defendants No. 1 to 4 jointly and severally, for unauthorized use and occupation of the suit premises by them for the period pendentelite and future till possession is delivered, at such rate as may be determined by this Hon'ble Court by holding an inquiry in this regard as per law : and

d) to pass a decree of permanent injunction in favour of the plaintiff and against the defendant No. 1 to 4 thereby restraining them permanently from dealing in any manner including selling, transferring, assigning, alienating, mortgaging, charging or creating third party interest and /or parting with whole or part of the suit premises in any manner whatsoever, to anyone: and

e) to pass a decree of permanent injunction in favour of the plaintiff and against the defendant No. 1 to 4 jointly and severally thereby restraining them permanently from re-entering into the suit premises after the same is vacated and delivered to the plaintiff at their own or pursuant to the order/decreed passed against them in the present suit: and

f) to pass a decree of permanent injunction in favour of the plaintiff and against the defendant No.5 thereby restraining the defendant No.5 permanently from entering occupying the second floor of the suit premises in any manner, whatsoever and/or interfering into peaceful possession of the plaintiff, after the same is occupied by him upon delivery of possession of the portion by/and through the defendants No. 1 to 4, hereinafter: and

g) cost(s) of the suit may also be awarded in favour of the plaintiff and against the defendants jointly and severally throughout.

h) pass such other and further order, relief, decree in favour of the plaintiff and against the defendants jointly and severally as may be just deem fit and proper in the facts and circumstances of the present case and in the interest of justice”.

The relief sought against the wife was dropped and she was deleted from the array of parties. However, the Ld. Trial Court by impugned order dated 10.03.2014 held that the Family Court would have jurisdiction to deal with the case under section 7 (1)(c) of the Family Courts Act, 1984 over the area where the property is situated.

The learned counsel for the appellant submits that since the suit seeking relief against the children is not a matrimonial dispute, it could not be referred to the Family Court, which is to deal with issues relating to matrimonial disputes between spouses or matters relating to the matrimony, or custody of minors, and maintenance only.

The learned counsel for the respondent submits that there is no error in the judgment because the dispute does extend to circumstances relating to the marriage, i.e, the rights of the children borne out of the marriage. Hence, the issue ought to be decided before the Family Court. He relies upon judgment in ***S. Krishnamurthy v. Poubalane & ors.*** in C.R.P. (PD) No. 1477/2012 passed by Madras High Court on 06.03.2013 which held as under:-

“.....whether the marriage is valid or not or whether a person is a legally wedded wife or husband of another person or in respect of property of the husband and wife and in respect of any matters arising out of a marital relationship, the Family Court had exclusive jurisdiction. Similarly, in a suit or proceeding for a declaration as to the legitimacy of any person or a suit or proceeding for maintenance or a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor, the Family Court will have exclusive jurisdiction. But the underlining factor must be that a suit or proceeding referred to in section 7(2) of the Family Courts Act must be between the husband and wife and when the suit

is not between the husband and wife, even though such questions have arisen in any other suit, wherein the Court has to give an incidental finding, the Family Court will not have any exclusive jurisdiction.

In **Suprabha v. Sivaraman** passed by Kerala High Court AIR 2006 Ker 187, the Court held as under:-

“6. The next point to be considered is whether Section 7(d) of the Act is attracted or not. In Section 7(d), the words "between the parties to a marriage" are conspicuously absent. But it applies to a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. What is the meaning of the words "in circumstances arising out of a marital relationship"? Another Division Bench of this Court had occasion to consider the scope of Section 7(d) of the Act recently. In Leby Isaac v. Leena M. Ninan, Justice Hema, speaking for the Bench, analysed Section 7(d) of the Act with the help of the Family Courts (Kerala) Rules, 1989. It was found that all the proceedings initiated before the Family Court have to be treated as petitions and the relief granted will be orders. Therefore, the first part of Section 7(d) will be satisfied even though the section does not mention anything about a decree for recovery of money as coming under the provisions of Section 7(d) of the Act. The meaning of the word "circumstances" as found in Law Lexicon and Black's Law Dictionary was referred to and it was found that it will include those particulars which closely precedes, surrounds, accompanies or follows a marital relationship. It was found that the main requirement was that such circumstances must have a direct bearing on marriage. It was also found that "circumstances arising out of marital relationship" means not only those occurrences which transpired during marital life, but also include such circumstances which led to the marriage, which developed thereafter, and those such followed as a consequence. It was also found that if the intention of the legislature was to take in only those occurrences which took place during a marital relationship, there was no necessity to

use the word 'circumstances'. The inclusion of the word 'circumstances' in the provision was found to be quite significant which was done to include all such circumstances surrounding, preceding and closely following a marital relationship. That was a suit for recovery of damages by the husband against the wife and father-in-law. The claim was that the husband had spent Rs. 2,50,000/- for conducting the marriage but the wife refused to cohabit, with the husband and she had illicit relationship with the 3rd respondent. All these resulted in pain and suffering to the appellant and he claimed Rs. 10,00,000/- as compensation. The Family Court held that it had no jurisdiction since the cause of action in the suit was the alleged misrepresentation on the part of the respondent and the suit cannot be treated as a suit arising in the circumstances out of a marital relationship. The Division Bench of this Court set aside that finding and held that the O.P. was maintainable before the Family Court”.

The Court is of the view that neither of the two judgments would be of assistance to the respondent because section 7 (1) (c), relates to issues arising out of a marital relationship or circumstances relating to the matrimony. Children from matrimonial relationship are separate entities. They would be covered under the Act only when it is a question of their custody, welfare, maintenance, etc. so long as they are minors. Their rights would be governed under the laws applicable to them. However, in the present case, the *lis* is regarding the property of the father, between him and his sons, who have attained majority. It does not involve the parties to the matrimony or affect inter-se spousal rights and interests. Hence, the suit could not be adjudicated by the Family Court.

In view of the above, the impugned order is in error and is set aside.

The case shall be assigned by Ld. District Judge, Tis Hazari Courts, Delhi to the appropriate Civil Court for adjudication.

The appeal is disposed-off in the above terms.

Trial Court Records be returned to the Court concerned.

NAJMI WAZIRI, J

JANUARY 30, 2018

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