

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.01 of 2019**

Pawan Gupta, aged about 54 years, S/o. Late Shri Krishna Gupta, R/o Marathapara, Dhamtari, Tahsil and Dist. Dhamtari (CG)

-----Petitioner

Versus

Malti Gupta, wife of Shri Pawan Gupta, aged about 42 years, resident of Marathapara, Dhamtari, Tahsil and Dist. Dhamtari (CG)

----Respondent

For Petitioner	:	Mr.R.S.Patel, Advocate
For Respondent	:	Mr.D.N.Prajapati, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

28/02/2019

1. The plaintiff/respondent herein filed a suit for declaration that she is legally wedded wife of the defendant/petitioner herein. During the course of trial of the suit, the defendant/petitioner herein apart from filing written statement also filed an application for raising the question of jurisdiction that suit for declaring matrimonial status of the plaintiff is barred by Explanation (b) to Section 7 (1) of the Family Courts Act, 1984 (hereinafter called as "the Act of 1984"), therefore, plaint be rejected. Said application was opposed by the respondent/plaintiff by filing reply. By the impugned order, the trial Court has rejected the said application holding that there is no express bar contained in Section 7 of the Act of 1984, against which, this writ petition has been preferred by the petitioner/defendant.
2. Mr.R.S.Patel, learned counsel for the petitioner/defendant, would submit that the trial Court is absolutely unjustified in rejecting the application, as the suit framed and filed seeking declaration as to the matrimonial status of the plaintiff, is only cognizable by the Family Court in view of provisions

contained in Explanation (b) to Section 7 (1) of the Act of 1984, therefore, plaint is liable to be rejected.

3. On the other hand, Mr.D.N.Prajapati, learned counsel for the respondent/plaintiff, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In order to appreciate the point raised at the Bar, it would be appropriate to notice Sections 7 and 8 of the Act of 1984. Section 7 of the Act of 1984 deals with the jurisdiction of the Family Courts, which reads as follows:-

“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 circumstances 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.”

6. Section 8 of the Act of 1984 deals with the exclusion of jurisdiction, which reads as follows:-

“8.Exclusion of jurisdiction and pending proceedings.—

Where a Family Court has been established for any area—

- (a) no District Court or any subordinate civil court referred to in sub-section (1) of Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)—

- (i) which is pending immediately before the establishment of such Family Court before any District Court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and

- (ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.”

7. By virtue of Explanation (b) to Section 7(1) of the Act of 1984, a suit or proceeding for declaration as to the validity of marriage or as to matrimonial status of any person is maintainable as that suit is covered by Explanation (b) to Section 7(1) of the Act of 1984.

8. The Supreme Court in the matter of S.D.Joshi and others v. High Court of Judicature at Bombay and others¹ while considering the provisions contained in Sections 7 and 8 of the Act of 1984 held as under:-

“25. Section 8 further states that no District Court or any subordinate Civil Court will have jurisdiction over the matters which have been specifically spelt out under sub-section (1) of Section 7 of the Act in relation to the area over which it exercises jurisdiction. It also excludes jurisdiction of the Magistrate in relation to such area over which the Family Court exercises jurisdiction under Chapter IX of the Code of Criminal Procedure, 1973. Every pending suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 of the Act, as well as every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 was liable to be transferred to such Family Court.”

9. Similarly, the Supreme Court in the matter of Balram Yadav v. Fulmainya Yadav² dealing with Explanation (b) to Section 7(1) of the Act of 1984 held as under:-

“7. Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.”

10. The Division Bench of this Court in the matter of Asfaq Qureshi v. Aysha Qureshi³ has held that in accordance with Explanation (b) to sub-section (1) of Section 8 of the Family Courts Act, 1984, the Family Court is competent to give declaration as to the validity of a marriage or as to the matrimonial status of any person.

1 (2011) 1 SCC 252

2 (2016) 13 SCC 308

3 2010(3) C.G.L.J. 28 (DB)

11. The respondent/plaintiff has claimed the following reliefs in the plaint filed before the Civil Court:-

“अ. यह कि इस आशय कि घोषणात्मक आज्ञाप्ति पारित की जावे कि वादीनी मालती गुप्ता, प्रतिवादी पवन गुप्ता की वैध वैवाहित पत्नी है।

ब. यह कि माननीय न्यायालय जो उचित समझे अन्य अनुतोष प्रदान करने की कृपा करें।”

12. Relief 12(b) claimed by the respondent/plaintiff in the plaint would clearly show that the plaintiff has claimed declaration regarding her matrimonial status that she is legally wedded wife of the defendant, as such, relief claimed by the plaintiff is squarely covered by Explanation (b) to Section 7 (1) of the Act of 1984 and said dispute seeking declaration as to the matrimonial status of the plaintiff is cognizable by the Family Court, which has already been constituted at Dhamtari for whole Revenue District Dhamtari.
13. As a fallout and consequence of the above-stated discussion, the impugned order is set aside and it is held that Civil Court at Dhamtari has no jurisdiction to entertain and adjudicate the dispute brought by the plaintiff as stated hereinabove and plaint is accordingly rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.
14. The writ petition is allowed to the extent sketched hereinabove leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-