IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Regular First Appeal No.3 of 2018

Laitonjam Jiteshwori Devi aged about 45 years D/O Late Laitonjam Thouba Singh, a resident of Wangkhei Ninghtempukhri Mapal P.O. Imphal P.S. Porompat Imphal East Manipur.

... Appellant

- Versus -

1. Laitonjam (N) Khundongbam (O) Premi Devi aged about 39 years D/O late Laitonjam Thouba Singh and W/O Khundongbam Bipin Singh of Khongman Mangjin, P.O. & P.S. Porompat District, Imphal East Manipur.
2. Laitonjam (N) Achoubi @ Omila Devi aged about 36 years D/O Late Laitonjam Thouba Singh and Laitonjam Ongbi mala Devi (Mother) of Wangkhei Ninghtem Pukhri Mapal P.O. Imphal P.S. Porompat District Imphal East Manipur, W/O Moirangthem Ashakumar Singh, a resident of Ingurok Makha Leikai P.S. Yairipok, District Imphal East, Manipur.
3. Laitonjam (N) Jinat Devi aged about 35 years D/O Late Laitonjam Thouba Singh & Laitonjam Ongbi Mala Devi of Wangkhei Ningthem Pukhri Mapal P.O. Imphal P.S. Porompat, District Imphal East, Manipur and W/O Thoidingjam Ashim Singh of Khagempali Panthak, P.O. & P.S. Imphal, District Imphal West, Manipur.
4. Laitonjam Sanjoy Singh aged about 44 years S/O Late Laitonjam Thouba Singh & Laitonjam Ongbi Mala Devi

(Mother) of Wangkhei Ningthem Pukhri Mapal P.O. Imphal, P.S. Porompat, District Imphal East, Manipur.

5. Laitonjam Henry Singh aged about 32 years S/O late Laitonjam Thouba Singh & Laitonjam Ongbi Mala Devi (Mother) a resident of Wangkhei Ningthem Pukhri Mapal P.O. Imphal, P.S. Porompat, District Imphal East, Manipur.

... Respondents

B E F O R E

HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR
HON'BLE MR. JUSTICE MV MURALIDARAN

For the Appellant :: Mr. H. Nabachandra, Adv.

For the Respondents :: Mr. Th. Henba, Adv.

Date of hearing & Order :: 27-02-2020

JUDGMENT & ORDER
(ORAL)

(M.V. MURALIDARAN, J)

[1] This appeal is directed against the order dated 26.02.2018 passed in Mat (Dec) Suit No.61 of 2017 by the Family Court, Imphal East, returning the plaint under Order 7, Rule 10 C.P.C.

[2] The appellant is the plaintiff and she had originally filed the suit in Mat (Dec) Suit No.61 of 2016 before the Family Court, Lamphelpat, Imphal for declaring that she is the unmarried daughter of her deceased parents and to declare that she being the only family

member eligible for family pension. Later, the said suit was transferred to the file of the Family Court, Imphal East and numbered as Mat (Dec) Suit No.16 of 2017.

[3] The respondents filed written statement in Mat (Dec) Suit No.61 of 2016 admitting the case of the appellant.

[4] The appellant examined herself as P.W.1 and two other witnesses were examined and she had also marked documents on her side.

[5] The Governor of Manipur issued notification on 15.07.2017 constituting Family Court, Imphal East @ Imphal. Pursuant to the said notification, Family Court at Imphal east constituted and the suit was transferred from the file of Family Court, Lamphelpat to the file of the Family Court, Imphal East.

[6] By the time the case was transferred to the Family Court, Imphal East, evidence was completed. Considering the oral and documentary evidence, the Family Court, Imphal East framed a question whether the Family Court has jurisdiction to decide the cause of action and held that the present case cannot be described as a family dispute. Accordingly, the Family Court, Imphal East returned the plaint under Order 7, Rule 10 C.P.C., which is challenged in this appeal.

[7] Assailing the order of the Family Court, Imphal East returning the plaint, the learned counsel for the appellant submitted that there should be some uniformity for the appellant submitted that there should be some uniformity for the jurisdiction of the Family Court of Manipur and that the Family Court, Lamphelpat; the Family Court, Bishnupur and the Family Court, Thoubal are undergoing the hearing of unmarried certificate of any female person and in all these Family Courts of Manipur, the unmarried certificate/decree/order are given. The learned counsel would submit that the unmarried female person who are not in the area of Imphal East are enjoying the benefit of the family pension by the order of the Family Court.

[8] The learned counsel further submitted that the Family Court, Imphal East has turned down all the arguments related for the declaration of unmarried decree/order and has erred in returning the plaint. Arguing so, the learned counsel prayed for setting aside the order of the Family Court, Imphal east and praying direction to the Family Court, Imphal East to decree the suit declaring that the appellant is the unmarried daughter of her parents.

[9] This Court heard the submissions of the learned counsel for the respondent, who has argued the merits of the claim made by the appellant.

[10] This Court considered the submission made by the learned counsel appearing on either side and also perused the materials available on record.

[11] The appellant, as plaintiff filed the suit stating that her father Laitonjam Thouba Singh was working as driver in Border Security Force of Debasibora Tura West, Garo Hills and she is the elder daughter. The defendants 1 to 5 are her sisters and brothers. Her father retired from service on 31.12.1994 and after retirement, her father was receiving pension and he died on 10.12.2016. The mother of the appellant Laitonjam Ongbi Mala Devi predeceased her father. According to the appellant, she is the only unmarried daughter of late Laitonjam Thouba Singh. Under rule 54(6) of the Central Civil Service (Pension) Rule, 1972, the family pension in the case of unmarried daughter is to be paid till she attains the age of 25 years or till she gets married whichever is earlier.

[12] The case of the appellant is that as per the Government of Manipur Office Memorandum dated 17.05.2011, the family pension of unmarried daughter is to be paid on production of an order/decree from the Family Court.

[13] The sisters and brothers of the appellant, who are defendants in the suit filed common written statement stating that after the death of their father, the defendants 4 and 5 are living along with

the appellant under the same roof and also under the supervision of the appellant. As far as the defendants 1 to 3 are concerned, they are living at their husband's house and they have no objection to declare the appellant as an unmarried daughter.

[14] While the above is the pleadings of the parties, the Family Court, Imphal East, in its order noted that it is not the case of the appellant that her matrimonial status as unmarried daughter has been clouded by the act of any specific person and it was not pleaded that the Border Security Force authority has ever disputed her matrimonial status. Thus, there is no dispute from any party regarding the appellant's status, but in spite of that a declaration was sought merely to carryout the advice of the Border Security Force authority. In its order, the Family Court, Imphal East further noted that the determination of the merits of the matter will arose only if Family Court has jurisdiction to deal with the present suit.

[15] On the point of jurisdiction, the Family Court, Imphal East heard the submissions of the learned counsel for the appellant and after going through the citations referred to by the appellant, the Family Court, Imphal East held as under:

> *"26. The question, therefore, if the Family Court has jurisdiction or not has to be decided with reference to the nature of the cause of action and not by the fact who have been arrayed as parties. The nature of the dispute,*

if any, in the present case cannot be described as a family dispute. The matter is between the plaintiff and the BSF authority who are total strangers to each other. The nature of the case has no nexus whatsoever with the object of the Family Court Act. There cannot be any question for applying conciliatory procedure.

27. Once again, it may be emphasized that an exclusion of the jurisdiction of the civil courts is not to be readily interred.

28. To conclude, I am of the view that the present case does not come within the jurisdiction of the Family Court.

29. This leaves the court to decide the power course of action to be taken. Ld. Counsel for the petitioner was of the view that the case ought to be dismissed if the Court came to a conclusion that it had no jurisdiction. However, Order 7, Rule 10 of the CPC provides the procedure to be adopted in such case. Therefore, this Court is refraining from disposing the suit on merit by a final judgment.

30. Accordingly, the plaint is returned under order 7, rule 10 C.P.C."

[16] In the instant case, admittedly, the suit of the appellant was entertained by the Family Court, Lamphelpat, where the trial has commenced and at that point of time, the Family Court, Lamphelpat has not raised any objection as to the jurisdiction of the Family Court to entertain the suit. On the other hand, the Family Court, Lamphelpat

allowed the appellant to proceed with the suit and on the side of the appellant, three witnesses were examined. At the relevant point of time, if the Family Court has raised the jurisdiction issue, the appellant was in a position to answer the same. Having allowed the appellant to commence the suit by the Family Court, Lamphelpat and subsequently on transfer, returning the plaint on the point of jurisdiction of the Family Court by the Family Court, Imphal East is really unsustainable and the same would cause serious prejudice to the appellant.

[17] At this juncture, it is to be mentioned that Matrimonial (Declaration) Suits in respect of declaration to declare the unmarried status of daughter was entertained by the Family Court, Manipur. This, we find from the Revision Petition filed in the case of ***Nina Sabo v. Chanie Sibo, decided on 07.04.2014*** arising out of the order of the Family Court, Manipur, dated 20.12.2013 in Mat. (Declaration) Suit No.26 of 2013, where the mother of the petitioner was receiving family pension and she died on 19.01.2003. The petitioner therein claiming herself to be an unmarried daughter, lodged a claim for payment of family pension. Family pension to the petitioner was not paid as she has not produced the declaration from the competent Court that she is not married. Then, she filed Mat. (Declaration) Suit No.26 of 2013 before the Family Court, Manipur for a declaration that she is not married.

[18] It appears that in the aforesaid suit, the petitioner therein has filed application under Order 15, Rule 1 CPC praying for pronouncement of judgment on the basis of the affidavit filed by the respondent/defendant No.1. In the impugned order, the Family Court directed appearance of the petitioner to verify the contents of affidavit and cause production of document for the purpose of such declaration.

[19] After hearing the learned counsel appearing on either side, this Court observed as under:

> *"3. Undisputedly, when the case of the plaintiff is admitted by the defendant, nothing remains to be adjudicated and therefore issues are not framed. When issues are not framed and nothing remains to be adjudicated, judgment could be delivered and decree could be drawn on the basis of such admission. However, in the present case it appears that the petitioner wants a decree from the Court for the purpose of receiving family pension. The decree involves declaration that the petitioner is unmarried. If the learned Judge, Family Court, Manipur though it is proper to examine the petitioner and peruse the documents on the basis of which such a declaration is sought for, I am of the view that there is no reason for this Court to interfere with such order. There may be cases where parties collude and in order to be on the safe side, sometimes Court insists on some evidence for passing an order even if the claim may be admitted.*

> *If the Court has used its discretion in directing the petitioner to appear in person for examination, to be on the safe side, before passing judgment and decree, there is no reason for the High Court to interfere in use of such discretion by the trial Court. I am, therefore, not inclined to interfere with the impugned order. However, since it is question of payment of family pension, I direct the learned Judge, Family Court to complete the proceeding as early as possible preferably within a period of two months from the date of receipt of communication of this order."*

[20] Thus, it is clear that the Family Courts in the State of Manipur are entertaining suits qua declaratory relief as sought for by the plaintiff to declare that the plaintiff is the unmarried daughter of deceased parents. In the instant case, the defendants have filed a joint written statement admitting the case of the appellant. Thus, the instant case is similar in nature of the case in ***Nina Sabo*** (supra).

[21] Admittedly, the Family Courts Act, 1984 confers jurisdiction upon a Family Court in respect of matrimonial disputes defined under Explanation to Section 7(1). Explanation to Section 7(1) and sub-section (2) of Section are quoted below:

> *"Section 7(1) .....*
>
> *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 cirbumstances 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 other 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."

[22] From the perusal of the aforesaid provisions, it is clear that Section 7(1)(e) provides suit or proceeding for a declaration as to the legitimacy of any person. Even though the legitimacy of the

appellant in respect of her birth from the wedlock of her parents was not in issue, still the suit for declaration that the appellant is the unmarried daughter of her parents can be entertained, as the unmarried status would also arise from the legitimacy. Therefore, the finding of the Family Court that the present case is not under the category of family dispute and that the Family Court has jurisdiction to entertain the suit are unacceptable in the peculiar facts and circumstances of the case.

[23] Admittedly, the defendants have not raised any objection as to the entertainment of the suit by the Family Court and in fact, they have given no objection in issuing the declaration as prayed for by the appellant in her suit. However, the Family Court, on its own motion, comes to the conclusion that it had no jurisdiction. Such a finding arrived at by the Family Court that too after the examination of the appellant's side witnesses is perverse. Since in an earlier occasion this type of suits entertained by the Family Court, now the Family Court cannot turn round and say that the Family Court had no jurisdiction.

[24] In the facts and circumstances of the case and in view of the discussion held, this Court is of the considered view that the Family Court, Imphal East has got jurisdiction to entertain and try the

suit filed by the appellant for declaration, as in the past the Family Court, Manipur entertained this type of suits.

[25] In the result,

(1) The order of the Family Court, Imphal East dated 26.02.2018 returning the plaint in Mat. (Dec) Suit No.16 of 2017 is set aside and the Family Court, Imphal East is directed to proceed with the suit filed by the appellant.

(2) It is made clear that this Court delved into the issue of jurisdiction only and not touched upon the merits of the claim made in the suit even though the defendants therein have no objection in issuing the declaration sought for by the appellant as the suit is at the stage of delivering judgment.

(3) It is open to the Family Court, Imphal East to consider the prayer made by the appellant based on the pleadings and evidence adduced by the appellant.

(4) The views expressed by this court qua jurisdiction is only based on the given facts and circumstances of the case, as the Family Court, Imphal East returned the plaint holding it has no jurisdiction to entertain the suit.

(5) Since, the prayer in the suit is to get family pension, this Court directs the Family Court, Imphal East to complete the proceedings as

early as possible, preferably within a period of two months from the date of receipt of this order.

(6) No costs.

JUDGE **JUDGE**

FR/NFR

Larson

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.06.08 11:27:25 +05'30'