

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 9825 of 2018(O&M)

Date of decision: 8.1.2020

Sunita

.....Appellant

VERSUS

Krishan Pal and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Nishant Arya, Advocate for the appellant.

REKHA MITTAL, J. (Oral)

Challenge in the present appeal has been directed against judgment dated 24.07.2018 passed by the District Judge, Bhiwani whereby appeal against judgment and decree dated 21.04.2017 passed by the Civil Judge (Junior Division), Bhiwani (hereinafter referred to as 'the trial Court') was allowed primarily on the ground that Civil Court does not have the jurisdiction to entertain and try the present suit with regard to validity or otherwise of marriage of the respondents/defendants or as to their matrimonial status, in view of Section 7 clause (b) of explanation appended to Section 7(1) of the Family Courts Act, 1984 (in short 'the Act').

Counsel for the appellant would argue that in the suit for declaration filed by Smt. Sunita, she not only sought declaration in respect of alleged marriage dated 13.02.2011 of defendants No.1 and 2 being void under Section 5 of the Hindu Marriage Act, 1955 but also sought injunction restraining respondent No.1 from mentioning respondent No.2

as his wife either in his service record or any other document or to treat as such being his wife. It is argued that relief of permanent injunction can only be granted by the Civil Court, therefore, decision of the matter in controversy lies within the domain of Civil Court and not Family Court.

Another submission made by counsel is that even if it is held that Civil Court does not have the jurisdiction to decide the matter in controversy, the plaint should have been returned to the appellant for its presentation before a competent Court of law in view of the provisions of Order 7 Rule 10 of the Code of Civil Procedure, 1908 (in short ‘the Code’).

Section 7 of the Act deals with jurisdiction of the Family Court. A Family Court is conferred with jurisdiction as per clause (a) and (b) of Section 7(1) of the Act. Explanation appended thereto says that suits and proceedings referred to in this sub section are suits and proceedings of the following nature namely:-

“(a) xx xx xx

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;”

Perusal of the impugned judgment makes it evident that the appellant filed suit for declaration with regard to marriage between respondents/defendants being not valid and liable to be set aside, therefore, the relief claimed by the appellant is covered within the purview and ambit of clause (b) under the aforesaid explanation. Clause (d) under the explanation says that a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. Meaning thereby that the Family Court has also been conferred with jurisdiction to grant

injunction in circumstances arising out of a marital relationship. In this view of the matter, first contention raised by counsel for the appellant that the relief with regard to injunction cannot be granted by the Family Court is patently misconceived and liable to be rejected.

The Appellate Court had decided that the Civil Court does not have the jurisdiction to decide the suit and the same lies within the domain of Family Court.

Order 7 Rule 10 of the Code deals with return of plaint. A relevant extract therefrom reads as follows:-

“Return of Plaint : Subject to the provisions of **Rule 10A**, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.”

As the Appellate Court had arrived at a finding that the Civil Court does not have the jurisdiction to decide the case and the same lies with the Family Court, the Court should have made an order for return of the plaint for its presentation before the Family Court in exercise of power under Rule 10 of Order 7 of the Code. That being so, the judgment passed by the first Appellate Court is modified to the effect that plaint is ordered to be returned to the appellant for its presentation before the Family Court, in accordance with law.

Before parting with this order, it is pertinent to note that aforesaid modification has been made without notice to the respondents/defendants, to save them from unnecessary inconvenience and expense. However, they would be at liberty to file an appropriate application before the Court if they have any grievance to express.

For the foregoing reasons, the appeal stands disposed of.

JANUARY 8, 2020		(REKHA MITTAL)
‘D. Gulati’		JUDGE
Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no