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HIGH COURT OF CHHATTISGARH, BILASPURJudgment reserved on 14-12-2020Judgment delivered on 27-07-2021FAM No. 105 of 2015

[Arising out of judgment and decree dated 7-8-2015 passed by the Second Additional Principal Judge, Family Court, Durg, in civil suit No.119-A/2014]

1. Vivek Singh S/o Ashwini Singh, Aged About 35 Years R/o Shankar Nagar, Durga Chowk, Mohan Nagar, P.S. Durg, Tahsil And District Durg Chhattisgarh

---- Appellant

Versus

1. Yogendra Singh Thakur S/o Amuk Singh Thakur, Aged About 58 Years R/o Rohni Puram Colony, Raipur, Tahsil And District Raipur Chhattisgarh

Present Address- Karmachari Nagar, Qr. No.15, Street - 4, Tahsil And District- Durg Chhattisgarh.

---- Respondent

For Appellant	Mr. Anand Shukla, Advocate
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For Respondent	Mr. Prasoon Agrawal, Advocate
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Hon'ble Mr. Prashant Kumar Mishra, Ag. CJ.

Hon'ble Mrs. Rajani Dubey, J.

CAV Judgment

The following judgment of the Court is delivered by ***Prashant Kumar Mishra, Acting Chief Justice.***

1. This appeal under Section 19 (1) of the Family Courts Act, 1984 (for short 'the Act, 1984') has been preferred by the husband of the deceased wife challenging the judgment and decree of the trial Court allowing the suit preferred by the appellant's father-in-law

for return of the properties gifted to his late daughter Pratima Singh at the time of her marriage with the appellant.

2. While deciding the suit the trial Court has also rejected the appellant's objection to the maintainability of the suit before the Family Court to hold that the Family Court has jurisdiction to decide the suit.
3. The substantial part of the argument advanced before us revolved on this issue, therefore, we shall first deal with the issue concerning jurisdiction of the Family Court.
4. Facts of the case, very briefly stated, are that the appellant and Late Pratima Singh were married on 23-6-2007. Pratima Singh committed suicide on 3-1-2009 for which an offence under Section 306 of the Indian Penal Code was registered against the family members of the appellant, but we are not concerned with the dispute concerning the cause of death or as to who is responsible for such death. The present suit under Section 7(1)(c) of the Act, 1984 was moved by the respondent herein [father of late Pratima Singh] claiming return of various properties gifted to his daughter at the time of marriage. The appellant herein objected to the jurisdiction of the Family Court. Additional statement to this effect pleaded in the written statement is not happily worded, however, since the parties have gone to trial with an understanding that the said part of the objection relates to the jurisdiction of the Family Court and not only to the place where the suit will lie, we proceed to decide the appeal to deal with the merits of the objection regarding maintainability of the suit before the Family Court.
5. Mr. Anand Shukla, learned counsel appearing for the appellant, would argue that the family Court would only have jurisdiction to decide a suit or proceedings between the parties to a marriage with respect to the properties of the parties or either of them, as

provided under Section 7(1) Explanation (c) of the Act, 1984, therefore, the present suit having been filed by the father-in-law, who was not a party to the marriage, the Family Court has no jurisdiction to decide the suit.

6. Mr. Prasoon Agrawal, learned counsel appearing for the respondent, *per contra*, would argue that the word 'parties to the marriage' cannot be given a restricted meaning. The present suit by father of the wife (father-in-law of the husband) is for return of *Stridhana* properties gifted to his daughter at the time of marriage, therefore, in the facts and circumstances of the case, the plaintiff steps into the shoes of his deceased daughter who was party to the marriage, therefore, the suit is maintainable.
7. To buttress their respective contentions, learned counsel for both the parties would place reliance upon the decisions rendered in *Suprabha v Sivaraman K.K. & Anr.*¹, *K.A. Abdul Jaleel v T.A. Shahida*², *Leby Issac v Leena M. Ninan alias Lincy and Others*³, *P. Srihari v Kum. P. Sukunda and another*⁴, *Rakhi Deorankar v Jayendra Deorankar*⁵, *O.M. Meyyappa Chattier v Kannappa Chattier and Others*⁶, *Workmen of Dimakuchi Tea Estate v The Management of Dimakuchi Tea Estate*⁷, *Bobbili Ramakrishna Raja Yadad and Others v State of Andhra Pradesh Represented by its Public Prosecutor, High Court of Andhra Pradesh, Hyderabad, Andhra Pradesh and Another*⁸, *Syamaladevi v Sarala Devi & Ors.*⁹, *Pratibha Rani v Suraj Kumar and Another*¹⁰, *May George v Special Tahsildar and Others*¹¹ and *Shyni v George and others*¹².

1 AIR 2006 Kerala 187

2 (2003) 4 SCC 166

3 2005 SCC OnLine Ker 345 : AIR 2005 Ker 285

4 AIR 2001 Andhra Pradesh 169

5 (2008) 5 MhLJ 98

6 AIR 1976 Madras 154

7 AIR 1958 SC 353

8 (2016) 3 SCC 309

9 2009 SCC OnLine Ker 508 : AIR 2009 Ker 138

10 (1985) 2 SCC 370

11 (2010) 13 SCC 98

12 1997 SCC OnLine Ker 80 : AIR 1997 Ker 231

8. Before we proceed to dwell on the issue it would be profitable to quote relevant provisions of law which have been referred by learned counsel for the parties at the time of argument.
9. Section 7(1) of the Act, 1984 is quoted below for ready reference :

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.

[Emphasis added]

10. Section 27 of the Hindu Marriage Act, 1955 (for short 'the Act, 1955') is quoted below :

27. Disposal of Property.--In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

11. A plain reading of the provisions would manifest that for maintaining a suit or proceeding of the nature mentioned in Explanation (c) sub-section (1) of Section 7 of the Act, 1984, the suit or proceeding has to be between the parties to a marriage with respect to the property of the parties or of either of them. In the case at hand, there is no dispute that the subject properties were gifted at the time of marriage and thus the properties belong to the parties to the marriage or of either of them, therefore, the germane issue would be whether a suit preferred by father of the wife can be treated as a suit preferred by a party to the marriage.

12. The issue at hand has engaged several High Courts for decision making, therefore, it would be profitable to refer to some of the judgments.
13. In ***P. Srihari*** (supra) the Division Bench of the Andhra Pradesh High Court was considering maintainability of a suit for partition filed by sisters against their brothers for partition of their father's property. Holding that such suit is not maintainable before the family Court it was observed thus in para 5 :

5) In view of the above, the essential ingredient should be a dispute between the husband and the wife and the said dispute can be with regard to their marital status, divorce, restitution of conjugal rights, judicial separation, child custody, maintenance, as also property sharing. But, in no event, the Family Court can have jurisdiction if the above dispute is absent. By no stretch of imagination, can the Family Court assume jurisdiction, if there is a dispute between the brothers, sisters, mothers, fathers etc. concerning property and the case on hand being one such, the Family Court had clearly no jurisdiction.

[emphasis supplied]

14. In ***K.A. Abdul Jaleel*** (supra) ***the Supreme Court*** had an occasion to consider jurisdiction of Family Court vis-à-vis Section 7 Explanation (c), when the suit has been filed by one of the divorced spouse. In the said case, the suit was filed by divorced wife. The maintainability of which was contested by the husband by raising the following arguments at para 8. The same was contested by the wife in para 9. Paras 8 & 9 are reproduced hereunder :

8) Mr. Haris Beeran, learned counsel appearing on behalf of the appellant, would submit that having regard to the provisions contained in Section 7 of the Family Courts Act, 1984, the Family Court had no jurisdiction to decide a dispute as regards properties

claimed by a divorced wife. The learned counsel would urge that the jurisdiction exercisable by any Family Court being between the parties to a marriage which would mean parties to a subsisting marriage. In support of the said contention strong reliance has been placed on a judgment of a Division Bench of the Allahabad High Court in Amjum Hasan Siddiqui v. Salma B. and Ponnayolu Sasidar vs. Sub-Registrar, Hayatnagar .

9) Mr. T.L.V. Iyer, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would contend that the matter is covered by an inter-parties judgment passed by a Division Bench of the Kerala High Court in Abdul Jaleel v Sahida. As the appellant herein did not question the correctness of the said judgment, he cannot be permitted to turn round and now challenge the jurisdiction the Family Court.

15. Dealing with the above quoted contentions of the husband and wife, the Supreme Court held thus in paras 10 to 12 :

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.

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.

[emphasis supplied]

16. In *Suprabha* (supra) holding that suit preferred by parents of either of the spouses is not maintainable in the context of Section 7 Explanation (c), the Division Bench of the Kerala High Court held thus in para 5 :

5) When either the husband or the wife is not alive and the suit is filed against the parents of either of them, it cannot be said that it is a suit or proceeding between the parties to a marriage. The learned counsel for the appellant relied on the meaning of the word "parties" in Ramanatha Iyer's Law Lexicon as "the person who take part in the performance of any act, or who are directly interested in any affairs, contract or conveyance or who are actively

concerned in the prosecution and defence of any legal proceeding.” The learned counsel for the respondent on the other hand relied on the meaning of the word “parties” in Black's Law Dictionary, which reads: “The person who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defence of any legal proceeding”. We are of opinion that in the context of S. 7(c) the meaning of the words “parties to a marriage” cannot be given such a wide interpretation as to include all those who are interested in the welfare of the couple or those who take part to the marriage ceremony. Therefore, the suit or proceeding must be between the husband and the wife with respect to the property of the parties or either of them. Thus we are of opinion that S. 7(c) of the Act is not applicable in such cases and the Family Court was justified in holding so.

[emphasis supplied]

17. In a subsequent decision rendered by another Division Bench of the Kerala High Court in *Syamaladevi* (supra) the earlier judgment rendered by the said High Court in *Suprabha* (supra) has been explained and distinguished in the following manner at paras 8, 11 & 12 :

8) Learned counsel appearing for the petitioner referred to a Bench decision of the Andhra Pradesh High Court in *Srihari v. Sukunda*, (2002 (1) KLT 101) : (AIR 2001 AP 169). There, a dispute between the family members concerning to property arose for resolution before the Family Court. One of the spouse was not a party to the litigation. It was held that it can never be considered as a cause falling within the realm of the Family Court. On facts, it was found that the case was one concerning a dispute between the relatives of the spouses. The factual details regarding the dispute and the manner in which such dispute arose, however, are not available in the said decision for perusal. In *Suprabha v. Sivaraman*, (2006 (1) KLT 712) : (AIR 2006 Ker 187) a Division Bench of this Court held that ‘when either of the

husband or the wife is not alive and the suit is filed against the parents of either of them, it cannot be said that it is a suit or proceeding between the parties to a marriage and therefore may not fall under Clause 7(c) of the Act. But the claim for return of the gold ornaments and other cash paid at the time of marriage was held to be within the jurisdiction of the Family Court, though one of the spouses was not alive at the time when the case was filed. Thus, even if one of the spouse is not alive, if the nature of the dispute falls under Section 7(d) it will still fall within the jurisdiction of the Family Court. This is a direct answer to the decision of the Division Bench of the Andhra Pradesh High Court, taking a contrary view.

11) As we have already pointed out, the plain language of the various clauses contained in Explanation (a) to (g) cannot be restricted to the dispute confining to the parties to the marriage either during the subsistence of the marriage or thereafter. Some of the dispute may even arise after either of them dies. That is very clear from the language of the expression used in Clause (b) of Explanation 7. While Clause (a) and various other clauses which we have already referred to would show that the nature of the dispute dealt with may be between the spouses; but it cannot be said that the disputes referred to under Clauses (c),(d) and (g) will be confined to the parties to the marriage. In other words, a suit or proceeding for an injunction may arise out of a marital relationship but need not necessarily be between the spouses.

12).....On the other hand, a dispute may be raised by the wife against the husband claiming that a particular property belong to her and not to him or that she had contributed to the acquisition of the property though it stands in the name of the husband. The husband, during the pendency of the proceeding, if dies, the proceeding does not become abated or ceased to be triable by the Family Court. It will be continued by the heirs of the husband claiming themselves to step into the shoes of the husband or by those interested to prosecute the matter. Therefore, one will have to examine the factual situation to say whether the dispute or claim falls under one or other category

which are mentioned in clauses (a) to (g) of Section 7. In this case, the first respondent seeks for a declaration that she is the wife of Bhaskara Pillai and the second respondent claims to be the child born out of that wedlock. Therefore, the relief claimed by them squarely falls within Clause (d) to Section 7 even though the dispute have arisen after the death of Bhaskara Pillai.

18. Thus, in *Syamaladevi* (supra) the Division Bench of Kerala High Court has held that the suit of the nature mentioned in Explanation (c) of Section 7(1) may not be confined to the parties to the marriage and in a given case a person who was not a party to the marriage can also maintain such suit.
19. In an earlier single Bench judgment of the Kerala High Court in *Shyni* (supra) the Family Court transferred the suit preferred by the wife against her father-in-law in relation to the some amounts gifted to her or her husband or jointly to them at the time of marriage, to the civil Court. Setting aside the order of the family Court holding that the suit can be tried by the family Court even if one of the party was not party to the marriage, it was observed thus in para 10 :

10) I have my own doubts whether the learned Judge was right in holding that the liabilities of the husband and the father-in-law are independent of each other. One of the claims in the suit is for recovery of the amount paid as streedhanam at the time of the marriage or just prior to the marriage of the petitioner with the first respondent. The amount was given in connection with the marriage. The other claim made by the wife is for recovery of the value of the ornaments, for recovery of the amount entrusted by the wife to the husband and for her past maintenance. The fact that the ornaments might have been entrusted to the husband by the wife at a point of time different from the time at which Streedhanam amount was paid into the hands of the father-in-law or that further sum belonging to the wife was paid into the hands of the husband at a time different from the point of time at which the Streedhanam was handed over to the father-in-

law would not make those claims totally independent of the claim against the father-in-law since all these claims arise out of the matrimonial dispute that has cropped up between the wife and the husband which has led to the filing of an application for restitution of conjugal rights by the husband and the filing of the present suit by the wife and also the filing of M.C. 236 of 1996 claiming maintenance against the husband. This is therefore a clear dispute relating to a marriage and family affairs between the spouses and hence clearly within the purview of the Family Court. The view adopted by the Family Court is unnecessarily narrow and tends to defeat the very object of the establishment of the Family Courts and also tends to multiply litigation in different fora arising out of a matrimonial dispute between the spouses. I am therefore not in a position to agree with the reasoning adopted by the Family Judge.

20. The judgment rendered by the Division Bench of the Kerala High Court in ***Syamaladevi*** (supra) holding a similar suit, like in the present case, maintainable before the family Court, seems to have missed the observation made by the Supreme Court in ***K.A. Abdul Jaleel*** (supra) in para 11 clearly observing that the statement of objects and reasons 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.
21. Despite the fact that the Supreme Court was considering the issue arising out of a suit, which was preferred by one of the divorced spouse, it is settled that even the obiter of the Supreme Court is binding on the High Court. The observation that “the 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.” Therefore, it is difficult to follow the decision rendered by the Division Bench of the Kerala High Court in ***Syamaladevi*** (supra).

22. In view of the above, the appeal succeeds. The suit preferred by the respondent herein, who is the father of deceased wife of the appellant, before the family Court is held not maintainable. The impugned judgment and decree is set aside for want of jurisdiction of the family Court reserving liberty in favour of the respondent to maintain the suit before the jurisdictional Civil Court.
23. As an upshot, the instant appeal is allowed, leaving the parties to bear their own cost(s).
24. A decree be drawn accordingly.

Sd/-

(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-

(Rajani Dubey)
Judge

Gowri

HEAD NOTE

Suit of the nature mentioned in Section 7(1) Explanation (c) of the Family Courts Act, 1984 filed by the father of the deceased wife before the family Court, is not maintainable, as the suit can be preferred only by parties to the marriage and not by any other person.