

HIGH COURT OF CHHATTISGARH, BILASPUR**FA(MAT) No. 56 of 2021**

1. Mahaeshwari, W/o Jaipal Kispotta, Aged About 28 Years,
2. Praveen Kispotta, S/o Jaipal Kispotta, Aged About 6 Years, Minor Through Natural Guardian Mother Maheshwari W/o Jaipal Kispotta, Both are R/o Village Lamgaon, Police Station Batouli, District- Surguja, Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

---- Appellants**Versus**

- Jaipal Kispotta, S/o Sivar Sai, Aged About 33 Years, Cast-Uraon, Occupation- Constable (Police Station- Samri Path) Through Superintendent of Police- Balrampur, District- Balrampur- Ramanujganj, Chhattisgarh.

---- Respondent

For Appellants : Shri A.N. Pandey, Advocate.

For Respondent : None.

**Hon'ble Shri Justice P. Sam Koshy, Judge &
Hon'ble Smt. Justice Rajani Dubey, Judge**

Order on Board**09/11/2021****Per P. Sam Koshy, Judge**

1. The matter is heard on admission.
2. Being aggrieved by the impugned judgment dated 24.09.2021 passed by the learned Principal Judge, Family Court, Ambikapur, Surguja (C.G.) in Civil Suit No. 75-A/2016, the present appeal has been filed under Section 19 of the Family Courts Act.
3. By the impugned order, the learned court below has allowed an application under Order 7 Rule 10 r/w Order 7 Rule 11 of the CPC and dismissed the suit as not maintainable.
4. The present is the plaintiffs' appeal assailing the order dated 24.09.2021. The appellants/plaintiffs have contended that the suit filed was for declaration by way of decree that the appellant

No. 1 was the legally wedded wife of the respondent/defendant and plaintiff No.2 was the son of the respondent/ defendant and after the declaration the name of the appellants/plaintiffs to be entered into the service record and the defendant who is working on the post of constable under the State of Chhattisgarh.

5. The respondent entered appearance before the Court below and moved an application under Order 7 Rule 10 read with an application under Order 7 Rule 11 of the CPC seeking for dismissal of the suit. The objection raised by the defendant was that the relief sought for by the appellants/plaintiffs is not one which could have been entertained by the Family Court and since the Court does not have the jurisdiction, the same has to be rejected.
6. The court below after due consideration of the said objection raised by the respondent/defendant by the impugned order has allowed the same and have dismissed the suit as not maintainable holding that the court below is having no jurisdiction to entertain a suit for the relief sought for.
7. For proper understanding of the dispute it could be relevant at this juncture to refer to Section 7 of the Family Courts Act which deals with the jurisdiction of the Family Court for ready reference Section 7 of the Family Courts Act is being produced herein as under:-

“(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.”

8. The plain reading of the aforesaid statutory provisions clearly reflects that the Family Court would have the jurisdiction to entertain the dispute which is otherwise provided in the explanation in the said Section 7 of the Family Courts Act.
9. On the plain perusal of the aforementioned explanations which is reproduced in the preceding paragraphs it clearly reflects that the two reliefs sought by the appellants/plaintiffs are not the ones which fall within the ambit of the explanation provided under Section 7 of the Family Courts Act and, therefore, we are of the firm opinion that the view expressed by the court below is neither bad in law or contrary to the provisions of the Family Courts Act. The proceedings before a Family Court would have been only in respect of the dispute relating to the marriage and the consequences thereon.
10. The Family Court cannot under any circumstance could have entered the suit for declaration. Moreover, the respondent/defendant has accepted the fact that plaintiff No.1 is his wife and that he has already moved a suit for divorce before the concerned court which is already pending.
11. Under the circumstances, the need for fresh declaration of the plaintiff No.1 as the wife of defendant does not arise at all nor does the family court has jurisdiction to entertain such a dispute.
12. Thus, the present appeal being totally devoid of merit deserves to be and is accordingly rejected. However, rejection of the appeal in the given facts and circumstances of the case would not preclude the appellant from raising an appropriate dispute before an appropriate forum for redressal of her grievances.

Sd/-
(P. Sam Koshy)
Judge

Sd/-
(Rajani Dubey)
Judge