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C.R.P.No.2328 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.2328 of 2019
and C.M.P.No.15182 of 2019

I.S.Selvagandhi

... Petitioner

Vs.

K.G.Umasankari

... Respondent

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 25.04.2019 passed by the learned II Additional District and Sessions Judge at Salem in I.A.No.182 of 2018 in O.S.No.162 of 2018 and allow the revision.

For Petitioner : Mr.M.Mohammed Riyaz

For Respondent : Mr.L.Mouli

ORDER

The Civil Revision Petition has been filed as against the fair and decreetal order dated 25.04.2019, passed by the learned II Additional District and Sessions Judge, Salem, in I.A.No.182 of 2018 in O.S.No.162 of 2018, thereby allowing the petition seeking interim maintenance under



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Section 24 of the Hindu Marriage Act r/w. Section 151 of C.P.C.

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2. The petitioner is the husband and the respondent is the wife. The respondent filed suit in O.S.No.162 of 2018 seeking maintenance of Rs.12,00,000/- per annum, on the ground that she got married the petitioner on 19.08.1988 and due to their wedlock, they gave birth to one son. Thereafter, there was a misunderstanding between them as such, the petitioner failed to maintain the respondent. She was driven out from the matrimonial home and she is living with her brother. She could not able to maintain herself. Therefore, she filed suit claiming maintenance and other prayers. While pending the suit, the respondent also filed an application in I.A.No.182 of 2018 under Section 24 of the Hindu Marriage Act, seeking interim maintenance of Rs.50,000/- per month till the disposal of the suit. The said application was allowed as against which, the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner submitted that



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suit itself is not maintenance before the civil Court and the civil Court has no jurisdiction to entertain the suit for seeking maintenance in favour of the petitioner and there is no cause of action for filing the suit itself. There was a family dispute between the petitioner and the respondent due to which she was driven out from the matrimonial home. She could not able to maintain herself and therefore, she filed suit seeking maintenance.

3.1. He vehemently contended that Section 7 of the Family Courts Act is very clear that any dispute between the husband and wife and prayer for declaration as to the validity of a marriage, suit between the parties to a marriage with respect to the property of the parties, suit arising out of marital relationship, suit for declaration as to the legitimacy of any person, suit for maintenance, suit relates to the guardianship of the person or the custody of any minor, the Family Courts got jurisdiction and no civil Court has jurisdiction to try the suit. He also pointed out that under Section 8 of the Family Courts Act, 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



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referred to in the explanation to that sub-section. Therefore, the trial Court has no jurisdiction to entertain the suit that too claiming maintenance.

3.2. He further submitted that while pending the suit, the petitioner filed petition for divorce on the ground of cruelty in H.M.O.P.No.426 of 2019 on the file of the Family Court, Salem. While pending the divorce petition, the respondent filed petition in I.A.No.2 of 2022 seeking interim maintenance of Rs.50,000/- per month till disposal of the divorce petition and it is pending for enquiry after filing the counter. Therefore, he prayed to allow the present Civil Revision Petition.

4. Per contra, the learned counsel appearing for the respondent submitted that while pending the application seeking interim maintenance before the trial Court, there was a compromise between the parties on 18.03.2019. The trial Court passed an conditional order that the petitioner shall pay a sum of Rs.25,000/- per month towards interim maintenance. It is also made clear that on compliance of terms in the joint compromise dated 18.03.2019 and on execution and production of necessary documents into



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the Court, the instant order shall stand automatically cancelled. However, the said compromise memo was not acted upon between the parties. He further submitted that already the petition filed by the petitioner for divorce is pending before the Family Court, Salem. Therefore, he prayed to transfer the present suit to the Family Court, Salem and try along with the petition for divorce.

5. Heard Mr.M.Mohammed Riyaz, learned counsel appearing for the petitioner and Mr.L.Mouli, learned counsel appearing for the respondent.

6. Admittedly, the petitioner and the respondent are husband and wife and they married on 19.08.1988 and gave birth to a male child. Now their son got marry and living separately. Hence, the respondent could not maintain herself and filed the suit for maintenance under Order VII Rule 1 to VI of Civil Procedure Code, before the learned District Judge, Salem, with the following prayers :-

*(i) directing the defendant to pay a sum of
Rs.12,00,000/- per annum from January, 2017 to December,*



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2017 and pay the same continuously till the life time of the plaintiff to the plaintiff.

(ii) create a charge over the properties detailed hereunder under the A schedule for the due payment of the said maintenance amount by the defendant to the plaintiff till her life time.

(iii) pass an order of permanent injunction that the plaintiff should not be evicted from the property detailed under the “B” Schedule of the plaint during the subsistence of the marriage between the plaintiff and the defendant, against the defendant, his relatives, men, agents and staff and any one claiming under him.

(iv) directing the defendant to pay off the jewel loan payable to the Indian Bank, Sivadhapuram for the jewel loans obtained by him by asking the plaintiff to pledge her jewels, directing her son to pledge the gold jewels of the plaintiff as per the directions of the defendant and the defendant himself had obtained jewel loan by pledging the gold jewels of the plaintiff, all with the Indian Bank, Sivadhapuram, Salem, which are detailed under the “C” Schedule of the plaintiff by redeeming them and to hand them over to the plaintiff, within the time fixed by this Hon'ble Court, by way of a mandatory injunction.



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(v) *directing the defendant to repay the Micro loan account in the name of the plaintiff borrowed by the defendant and utilized by him for his business purpose under Micro Loan account No.6421427656 with Indian Bank, Sivadhapuram on 28.03.2016 by way of a mandator injunction with the time fixed by this Hon'ble Court.*

(vi) *award costs of the suit.*”

While pending the suit, the respondent also filed a petition in I.A.No.182 of 2018 under Section 24 of the Hindu Marriage Act and Section 151 of C.P.C., and the same is allowed, as against which the present Civil Revision Petition.

7. The points for consideration in this revision are that (i) whether the suit filed by the respondent seeking maintenance before the civil Court is maintainable or not? (ii) whether the civil Court got jurisdiction to entertain the maintenance petition arising out of family dispute?

8. In this regard, it is relevant to extract the provision under Section 7 of the Family Courts Act, 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;



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(d) a suit or proceeding for an order or injunction in circumstance 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.”

Accordingly, the Family Court has jurisdiction to entertain the above maintenance suit arising out of family dispute.

9. It is also relevant to extract the provision under Section 8(a) of the Family Court Act as follows :-

“8. Exclusion of jurisdiction and pending proceedings.

Where a Family Court has been established for any area,— (a)



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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;”

Thus it is clear that after the Family Court has been established, no other Courts referred to in sub-Section (1) of Section 7 of the Family Courts Act, have no jurisdiction to entertain the suit of the nature referred to in the explanation.

10. In this regard, it is relevant to rely upon the judgment reported in **MANU/SC/0162/2022** in the case of **N.Rajendran Vs. S.Valli**, in which our Hon'ble Supreme Court of India held that with the promulgation of the Family Court Act, unless the Family Court is established, the Courts which were earlier dealing with the provisions would continue to have jurisdiction. When the establishment of Family Courts and the jurisdiction it was to exercise under Section 7 of the Family Courts Act. The Family Court Act must be read along with the cognate enactments. In other wards, the Family Courts Act is not a standalone Act and it draws sustenance from Acts like



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the Hindu Marriage Act. This is for the reason that a petition within the meaning, for instance, of the Hindu Marriage Act, after a Family Court is established in India, is to be dealt with by the Family Court, on the grounds as provided under the Hindu Marriage Act. In fact, mere perusal of Section 7 of the Family Courts Act would show that it speaks about the suits and proceedings.

11. Admittedly, the respondent filed suit for seeking maintenance of Rs.12,00,00/- per annum. While pending the suit, the respondent filed interim maintenance petition that too under Section 24 of the Hindu Marriage Act. Therefore, the trial Court has no jurisdiction to entertain the suit itself. Hence, the order of interim maintenance awarded by the Court below cannot be sustained and it is liable to be set aside.

12. That apart, the petitioner filed petition for divorce in H.M.O.P.No.426 of 2019, on the ground of cruelty, before the Family Court, Salem and it is pending. In that divorce petition, the respondent filed an application in I.A.No.2 of 2022 seeking maintenance and it is pending for



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enquiry. Therefore, the present suit itself cannot be sustained as against the petitioner, since the respondent already approached the Family Court for the same relief.

13. Considering the facts and circumstances, this Court finds that the order passed by the Court below is illegal and liable to be set aside. Accordingly, the order dated 25.04.2019, passed by the learned II Additional District and Sessions Judge, Salem, in I.A.No.182 of 2018 in O.S.No.162 of 2018, is hereby set aside and the Civil Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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1. The II Additional District and Sessions Judge,
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G.K.ILANTHIRAIYAN, J.

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