

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

CR-1544-2020 (O&M)

Reserved on: 10.10.2023

Pronounced on: **31**.10.2023

Sucheta Garg and others

.... Petitioners

Versus

Vineet Garg and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Akash Soni, Advocate for
Mr. Saurav Verma, Advocate, for the petitioners.

Ms. Archana Sharma, Advocate, for the respondents.

GURBIR SINGH, J.

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 04.11.2019 (Annexure P-2) passed by learned Additional Principal Judge, Family Court, Ludhiana, whereby the petitioners have been directed to pay ad valorem court fee in a petition filed by them for maintenance under Section 7 of the Family Courts Act, 1984; and order dated 03.02.2020 (Annexure P-4), whereby their application seeking recall of order dated 04.11.2019 has been dismissed.

2. In brief, the petitioners-plaintiffs filed a suit before the learned Additional Principal Judge, Family Court, Ludhiana under Sections 18 and 20 of Hindu Adoption and Maintenance Act, 1956 for grant of maintenance

and for declaration to the effect that the plaintiffs have charge and creating charge over the properties as mentioned in the head note of the plaint; and further for declaration to the effect that one transfer deed executed by defendant No.1 in favour of defendant No.2 and two transfer deeds executed by defendant No.1 in favour of defendant No.3 with regard to immovable property as mentioned in the head note of the plaint, are illegal and null and void; suit for declaration to the effect that the property measuring 495.56 square yards with specific boundaries where M/s Nitisha International is doing its business, has been purchased by defendant No.1 in the name of defendant No.3 out of the funds of Shivam Auto Forge, proprietorship concern of defendant No.1, as such petitioners-plaintiffs have charge over said property also; and suit for permanent injunction restraining the defendants/respondents etc. from interfering in the possession of the plaintiffs over the property No.165-D, Phase-1, Urban Estate, Focal Point, Ludhiana, as shown in red colour in the site plan; and also restraining them from alienating, transferring possession, creating any other charge or dealing with the property as mentioned in the head note of the plaint.

3. The learned Additional Principal Judge, Family Court, Ludhiana, passed the order on 04.11.2019 (Annexure P-2), the extract of which is as under:-

“..... The report of reader is perused and it is found that the suit of the plaintiffs is not valued for the purpose of court fee and jurisdiction as per relief of recovery of maintenance at the rate of Rs.1,50,000/- per month and litigation expenses of Rs.1,00,000/- for the plaintiffs sought by the plaintiffs against defendants and resulting of which now to come up on

25.11.2019 for making the deficiency of court fee good by the plaintiffs as per view taken in Satnam Singh Vs. Mandeep Kaur and another, PLR Vol-CLXXXI-(2016-1) 733 (Civil Revision No.1866 of 2014) referred by counsel for the defendants to proceed as per law.”

4. Thereafter, the plaintiffs moved an application (Annexure P-3) for recalling the order dated 04.11.2019 whereby the court has asked the plaintiffs for making the alleged deficiency of court fee good. Defendant No.1 filed reply to the said application whereas defendants No.2 and 3 filed separate reply. Vide order dated 03.02.2020 (Annexure P-4), said application was dismissed on the ground that the plaintiffs have filed the suit under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, suit for declaration that they have charge and creating over properties, suit for declaration that the transfer deeds are illegal and suit for permanent injunction. The plaintiffs have not only claimed the relief of maintenance but have also claimed other reliefs which can be granted only in a suit. It is also held that the order dated 04.11.2019 neither suffer from any error apparent on the face of the record nor suffers from any illegality.

5. The short question involved in the present petition is whether the plaintiffs are liable to pay ad valorem court fee or not on the suit pending before the Family Court.

6. The suit is filed before the learned Family Court. Plaintiff No.1 is the wife of defendant No.1 and daughter-in-law of defendants No.2 and 3. Plaintiffs No.2 and 3 are the children of defendant No.1 and grandchildren of defendants No.2 and 3.

7. Chapter III of the Family Courts Act, 1984 deals with the jurisdiction. Explanation (c) of Section 7 of said Act confers jurisdiction regarding property of the parties to a marriage. Explanation (f) deals with the suit or proceeding for maintenance.

8. Learned counsel for the petitioners submits that the suit filed under Sections 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 by the wife and children does not fall in the category of the suit and Section 7 of the Court Fees Act is not applicable and, therefore, the plaintiffs are not liable to pay ad valorem court fee.

9. Learned counsel for the respondents has made oral submissions as well as have filed written submissions.

10. It is argued that respondent No.1 earlier filed divorce petition and the petitioners-plaintiffs filed an application under Sections 24 read with Section 26 of Hindu Marriage Act for grant of maintenance pendente lite and litigation expenses which was allowed vide order dated 14.09.2023. Respondent No.1 paid the amount of Rs.9 lacs through various modes to the petitioners and Rs.11,40,000/- remained to be paid, so suit filed by petitioners-plaintiffs is not maintainable. There is no provision under the Family Act claiming charge over the properties belonging to the parents-in-law and restraining them from alienating the same. The petitioners have got the remedy by filing a separate suit before the civil court for creating charge over the properties as mentioned in the suit. Moreover, case under Hindu Adoption and Maintenance Act can only be filed if the proceedings under the Hindu Marriage Act are not pending but in the instant case, the petitioners have already got maintenance under the Hindu Marriage Act.

11. I have heard the submissions of learned counsel for the parties.
12. The Division Bench of this Court in ***Balwinder Singh Versus Sinderpal Kaur and another, 2019(4) R.C.R. (Civil) 720*** has held that the proceedings initiated before the Family Court for the purpose of maintenance are petition in nature and not suit and ad valorem court fee is not liable to be paid. Para 13 of said judgment reads as under:-

*“13. In para No.11 of the case of **Lt. Col. Satish Chaudhary (Supra)**, this Court, while dealing with the cases of **Smt. Mamta and others (Supra)** and **Saleesh Babu (Supra)** held that “the question of court-fee payable on a petition for maintenance in the context of HAMA and of help in this case has been considered by a Division Bench of the Rajasthan High Court in **Smt. Mamta And Others V. Hari Kishan, AIR 2004 Rajasthan 47** in the context of the Rajasthan High Court Family Courts Rules, 1994 and the Rajasthan Court Fees and Suits Valuation Act, 1961. The facts of the case were that the wife and children of the respondent moved an application under Sections 18 and 20 of the HAMA claiming maintenance in the sum of Rs.25,000/- per month. The husband filed an application under Order 7 Rule 11 CPC for rejection of the application for non-payment of Court-fee payable on valuation of the petition i.e. Rs.3 lacs. On the moot controversy, a preliminary issue was framed whether the application filed by the wife is liable to be dismissed for non-payment of court-fees. The Judge, Family Court, decided the issue against the wife who appealed to the High Court. It was contended before the Court that the proceedings for maintenance before the Family Court are summary in nature and as such an application cannot be termed as a 'suit'. Consequently, the provision of Section 22 of the Rajasthan Court Fees and Suit Valuation Act, 1961 is not a relevant factor and on such an application ad valorem Court fee*

is not payable on the amount claimed payable for one year. The Court was called upon to deal with Schedule II of the Rajasthan Act, 1961 where Sub-Clause (k) of Clause 11 of the Schedule II of the Act provides for fixed fees. Clause 11 identifies original petitions not otherwise provided for when filed in; (1) a Court subordinate to the High Court and (2) the High Court, and the fee prescribed therefor is Rs.2/- and Rs.10/- respectively. The Court reasoned that the Family Courts are empowered to make an attempt to simplify the rules and procedure so as to enable the Family Court to deal effectively with the disputes before it. One of its objectives is to bring succour to women and children who have been abandoned by their husbands/fathers and others. Rule 7 speaks of initiation of proceedings before the Family Court by way of plaint or petition or application or otherwise as the Court thinks fit. The Court opined that the framers of the rule have casually incorporated all sorts of alternatives, i.e., plaint or petition or application. In case, the action instituted before the Family Court is taken as a plaint and tried as a suit, the Court took the view that the entire purpose of setting up Family Courts will be frustrated. With a view to deal with actions in matrimonial disputes more quickly and effectively which are different from the procedure adopted in ordinary civil proceedings, the action will have to be taken as instituted on an application. Any other interpretation asking to affix ad valorem court fees will operate harshly and would tend to price justice out of reach of many litigants in distress thereby destroying the very object of setting up of the Family Courts. When a woman and the children ask for maintenance, they can institute proceedings by way of an application. Section 7 of the FCA directs that the Family Court shall be for the purpose of exercising the jurisdiction under the Act to be the District Court or any other subordinate Civil Court for the area, to which the jurisdiction of the Family Court extends. Thus, Section 7(1)(f) of

*the Act takes within its purview a suit or proceeding between the parties to a marriage with respect to the property of the parties or any of them and apply it for survival ends. Since the proceedings before the Family Court is commenced by way of a petition or an application, it is obvious that such an application would be governed by Schedule II of the Rajasthan Court Fees and Suit Valuation Act, 1961. The Court further reasoned in paragraph 15 of the judgment that a bare look at Section 22 of the Rajasthan Act shows that the said provision is applicable to suits and not applications or proceedings. Therefore, actions instituted under Sections 18 and 20 are proceedings within the meaning of Section 7 (f) and not a suit. Therefore, Section 22 has no application. To reach this conclusion, the Court drew strength from the Division Bench judgment of the Kerala High Court in **Saleesh Babu v. Deepa; (1996) 2 HLR 441**. It is well established law that in case of fiscal Statutes the provisions must be strictly interpreted giving every benefit of doubt to the subject and lightening as far as possible, the burden of court-fees on a litigant. Where an adjudication falls within two provisions of the Court-fees Act one of which is onerous for the litigant and other more liberal, the Court would apply that provision which is beneficial to the litigant. For this proposition of law the Court placed reliance on Supreme Court decisions reported in AIR 1957 SC 657 and AIR 1976 SC 1503. Accordingly, the Court held that all the petitions in the Family Courts are in the nature of petitions or applications and the court fees is payable under the residuary Clause 11(k) of the Schedule-II of the Rajasthan Court Fees and Suit Valuation Act, 1961”.*

13. The argument of learned counsel for the respondents is that it is not a case of maintenance but also for creating charge over the properties and

for declaration that the transfer deeds are null and void and for permanent injunction, so ad valorem court fee is required to be paid. The dispute regarding properties of the parties to the marriage are to be dealt by the Family Court and not by the regular civil court. Jurisdiction of regular civil court is barred in such matters. Moreover, creating charge over the property is to ensure recovery of maintenance which may be granted in a suit and if a person transfers the property in order to defeat the right of wife and children for maintenance, such suit can be tried by the Family Court and not by separate suit. The petitioners-plaintiffs are not liable to pay ad valorem court fee.

14. Since the short question in this petition is whether the petitioners are liable to pay ad valorem court fee or not, so the other points as raised by learned counsel for the respondents on merits are not being discussed herewith as it may cause prejudice to the rights of the parties.

15. Thus, the impugned orders dated 04.11.2019 and 03.02.2020 passed by learned Additional Principal Judge, Family Court, Ludhiana are against law and are hereby set aside. The petitioners are not liable to pay the ad valorem court fee on the suit filed by them in the learned Family Court.

16. Petition stands allowed accordingly.

(GURBIR SINGH)
JUDGE

October 31, 2023

sanjeev

Whether speaking/reasoned:

Yes

Whether reportable:

Yes