

Sudipta Sanjeeb Chakraborty Vs. Sanjeeb Chakraborty

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Court : Mumbai

Decided On : Jan-07-2009

Reported in : 2009(111)BomLR402; 2009(2)MhLj255

Judge : Anoop V. Mohta, J.

Acts : Special Marriage Act - Sections 27; Family Court Act - Sections 7; [Trade and Merchandise Marks Act, 1958](#); Specific Relief Act; Code of Civil Procedure (CPC) - Sections 16 and 20 - Order 7, Rule 10

Appeal No. : Writ Petition No. 623 of 2008

Appellant : Sudipta Sanjeeb Chakraborty

Respondent : Sanjeeb Chakraborty

Advocate for Def. : Abhijit Sarawate, Adv. i/b., Kokila Katra, Adv.

Advocate for Pet/Ap. : Shraddhanand Bhutada and ;Parineet Soratkar, Advs. i/b., S.S.P. Legal

Disposition : Petition dismissed

Judgement :

Anoop V. Mohta, J.

1. Heard finally, by consent.

2. The Petitioner/ wife has challenged the impugned order dated 01/11/2007, passed by the Family Court, Mumbai whereby her application is dismissed for want of territorial jurisdiction with regard to the dispute about flat situated at Pune, thereby not granted interim injunction / relief as prayed.

3. The parties married on 28th March, 2003 as per the provisions of Special Marriage Act, at Mumbai. They continued to reside in Mumbai after their marriage. On 07/10/2006 the wife / Petitioner filed a Petition under Section 27(d) of the Special Marriage Act. As alleged during the marriage they jointly purchased the flat bearing No. 401 situated on 4th floor of building known as 'Marigold', A-8, Gulmohar City, Khardi, Pune. The Respondent-husband inducted tenants in the said flat. In view of apprehension that he would create some more encumbrance or third party rights, the Petitioner moved an interim Application No. 288 of 2006, seeking an injunction against the Respondent and 50% rent of the said flat.

4. On 04/08/2007, the Respondent-husband replied and resisted the said application including issue about the territorial jurisdiction as the flat is located at Pune, beyond the territorial jurisdiction of the Family Court, Mumbai. On 01/11/2007, by the impugned order the Petitioner's interim application is rejected on the ground of want of jurisdiction. Hence the present Writ Petition.

5. Section 7 of the Family Court Act (for short, 'The Act') reads as under:

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) ...

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) ...

(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;

Section 7 deals with the nature of suits and proceedings which falls under the jurisdiction of 'the Family Court'. It is clear that those proceedings are governed by the Personal Marriage laws of the parties in disputes. In the present matter, the Special Marriage Act governs the dispute between the parties.

6. Section 16 and 20 of the Code of Civil Procedure (for short, 'CPC') reads thus:-
subject-matter situate:- Subject to the pecuniary or other limitations prescribed by any law, suits-

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) ...

(d) for the determination of any other right to or interest in immovable property, shall be instituted in the Court within the local limits of whose jurisdiction the property is situate.

20. Other suits to be instituted where defendants reside or cause of action arises-
subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction-

(a) ...

(b) ...

(c) the cause of action, wholly or in part, arises.

7. Section 16 and 20 of the CPC deals that the pecuniary and other limitation prescribed with regard to the institution of the suit in the Court in local limits of whose jurisdiction the property is situated.

8. Admittedly, the immovable property is situated at Pune. The Family Court at Bandra has no jurisdiction to deal with the property. The basic and substantial suit is for divorce under Special Marriage Act. The same is within the jurisdiction of the Bandra Court. Any matter incidental to the said matrimonial matter falls within the ambit of said Section. The Court can, pass appropriate order of incidental matters arising out of the main petition and declare her or his rights accordingly including the aspect of maintenance and permanent aliment. By present application, the Petitioner-wife claimed Civil rights praying for injunction against the Respondent-husband not to create further third party rights or interest in the said property and also claimed 50% of the rent of the said flat. The said application was objected and it was rejected by the Court below rightly so, in view of above clear provisions of law and the facts of this case.

9. The Apex Court in *Begum Sabiha Sultan v. nawab Mohd. Mansur AM Khan* : AIR 2007 SC1636 , while considering the various aspect of Section 16 of the CPC has observed as under:

10. There is no doubt that at the stage of consideration of the return of the plaint under Order VII Rule 10 of the Code, what is to be looked into is the plaint and the averments therein. At the same time, it is also necessary to read the plaint in a meaningful manner to find out the real intention behind the suit. In *Moolji Jaitha and Co. v. The Khandesh Spinning and Weaving Mills Co. Ltd.* A.I.R. 1950 F.C. 83 the Federal Court observed that; the nature of the suit and its purpose have to be determined by reading the plaint as a whole. It was further observed: the inclusion or absence of a prayer is not decisive of the true nature of the suit, nor is the order in which the prayers are arrayed in the plaint. The substance or object of the suit has to be gathered from the averments made in the plaint and on which the reliefs asked in the prayers are based.'

11. READING the plaint as a whole in this case, there cannot be much doubt that the suit is essentially in relation to the relief of partition and declaration in respect of the properties situate in Village Pataudi, Gurgaon, outside the jurisdiction of Court at Delhi'.

12. ON a reading of the plaint as a whole, it is clear, as we have indicated above, that the suit is one which comes within the purview of Section 16(b) and (d) of the Code. If a suit comes within Section 16 of the Code, it has been held by this Court in *Harshad Chiman Lal Modi v. DLF Universal Ltd. and Anr.* that Section 20 of the Code cannot have application in view of the opening words of Section 20 'subject to the limitations aforesaid'. This Court has also held that the proviso to Section 16 would apply only if the relief sought could entirely be obtained by personal obedience of the defendant.

10. The reliance on *Dhodha House v. S.K. Maingi I* (2006) CLT 38 (SC) is of no assistance to the Petitioner that was a case of injunction under [Trade and Merchandise Marks Act, 1958](#) to which provisions of CPC are applicable in all respect. This is a matrimonial dispute which falls within the ambit of the Special Marriage Act, as well as the Family Court Act. The Family Court is bound to act within the sphere and ambit of the Act. In view of specific Section 16 and 20 of CPC itself, no injunction or relief as prayed in interim application with regard to the immovable property situated at Pune, can be granted by the Family Court at Bandra, Mumbai. The facts and circumstances are totally distinct and distinguishable of this case. (See : AIR2008 Guj167 , *Darshanaben and Ors. v. Shantibai Ratilal Parmar and Ors.*)

11. Taking all this into account, there is no illegality committed by the Trial Court by rejecting the interim application filed by the Petitioner for want of territorial jurisdiction as the Court has jurisdiction over the claim of divorce and other incidental matter, but has no jurisdiction to grant injunction as prayed with regard to the Flat situated at Pune. The said relief falls basically under the Specific Relief Act. The Court has already granted the liberty to file appropriate application with regard to the said flat.

12. Resultantly, the Writ Petition is dismissed with no order as to costs.

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