

Ambi Pundalik and anr. Vs. Pundalik Shankar

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Court : Mumbai

Decided On : Mar-31-1959

Reported in : (1959)61BOMLR1167

Judge : Mudholkar and ;Naik, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 3, 19 and 28; ;Central Provinces and Berar Courts Act - Sections 20 and 311; Suits Valuation Act - Sections 9

Appeal No. : Civil Revn. Appln. No. 442 of 1958

Appellant : Ambi Pundalik and anr.

Respondent : Pundalik Shankar

Advocate for Def. : W.L. Khare, Adv.

Advocate for Pet/Ap. : R.N. Deshpande, Adv.

Judgement :

Naik, J.

(1) This is an application in revision from the judgment of the District Judge, Amraoti, holding that the appeal preferred before him in matrimonial proceedings under the Hindu Marriage Act was maintainable. The circumstances which have led to this revision application may be briefly stated as follows: The husband

started proceedings for restitution of conjugal rights under the Hindu Marriage Act against his wife. That petition having been dismissed by the Third Additional District Judge, the husband went up in appeal to the District Court in Civil Appeal No. 10-A of 1957. A preliminary objection was raised on behalf of the wife contending that the appeal did not lie to the district court, but that the appeal should have been properly filed before the High Court. On this preliminary objection, the District Judge, after examining the relevant provisions, came to the conclusion that the appeal to the District Court was competent. It is from that decision that the present revision application has been directed. The application was heard by Mr. Justice Badkas. He found that appeals are being filed in the High Court from the decisions of the additional Judges in a number of cases and therefore the question is of general importance. He has therefore referred the matter to a Division Bench for a more authoritative decision.

(2) In order to appreciate the question of the competency of the appeal it is necessary to refer first to the provisions of the Hindu Marriage Act. Section 19 of that Act provides that every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. The definition of a District Court is contained in clause (b) of Section 3 of the same Act under which a District Court means the principal civil Court of original jurisdiction, and includes any other civil Court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act. The only other provision to which reference need be made is Section 28 of the Act, which lays down that all decrees and orders made by the Court in any proceeding under this Act may be appealed from under any law for the time being in force. It will thus be seen that the District Court has been constituted as the Court having exclusive jurisdiction under the Act and it will continue to exercise such jurisdiction until the State specifies any other civil Court as having jurisdiction in these matters. So far as this area is concerned, no notification has yet been issued specifying any other civil Court as a District Court for the purpose of the Hindu Marriage Act. It would also appear that the District Court cannot transfer the proceedings to any other civil Court for trial. Of course,

this does not affect the power of the District Judge, as the officer presiding over the District Court to refer the proceedings for decision to the Additional District Judge attached to the same Court. His power, however, does not stem from the order of reference or distribution of business, but from the fact that the Additional District Judge is part and parcel of the District Court.

(3) In view of the provision of Section 28 of the Hindu Marriage Act in order to determine the forum to which appeals are to be preferred we have to consider the provision of other enactments. The relevant enactment in this respect is the Central Provinces and Berar Courts Act, 1917. That Act contemplates two classes of courts; (i) the Court of the civil judge and (ii) the district Court. Section 20 of the Act deals with the appellate jurisdiction of the courts. Clause (a) relates to an appeal from the decree or order of the Court of a civil Judge and it lays down that first appeal would lie to the District Court. Clause (b) is divided into two parts and it relates to an appeal from the decree or order of an additional Judge. Part (i) provides that where the value of the suit or original proceeding in such court does not exceed ten thousand rupees, an appeal shall lie to the District Court and Part (ii) provides that an appeal shall lie to the High Court where the value of the suit or original proceeding exceeds ten thousand rupees. That shows that an additional District Court deals with suits or original proceedings the value of which is below Rs. 10,000/- as also those where the value exceeds Rs. 10,000/-. The argument advanced by Mr. Khare was based on the provisions of sub-clauses (i) and (ii) of clause (b) of S. 20 of the C. P. and Berar Courts Act. He contended that since the decision appealed from is that of the Additional District Court we have to consider the valuation of the suit or proceeding from which the appeal has been preferred. He then drew our attention to rule 311 framed under Section 9 of the Suits Valuation Act which is in the following terms:

'Suits of the following classes shall, for the purposes of the Court-fees Act, 1870, the Suits Valuation Act, 1887, and the Central Provinces Courts Act, 1917, be treated as if the subject matter of such suits were of the value of four hundred rupees:

(1) suits for the restitution of conjugal rights, for declaration of the validity of marriage, or for a divorce;

(2) suits for the custody or guardianship of a minor; and

(3) suits for a declaration that an adoption is valid or invalid.'

Mr. Khare therefore contended that the valuation of a proceeding for restitution of conjugal rights of a proceeding for restitution of conjugal rights is an artificial value fixed by this rule, which is Rs. 400/-. If this argument is correct then it will logically follow in view of the provisions of Section 20(b)(i) and (ii) of the C. P. and Berar Courts Act that the appeal will necessarily lie to the district court.

(4) We have however to take into account some other factors in deciding this question. The first point to be noted is that rule 311 speaks of suits and does not refer to other proceedings of civil nature. This rule has been framed under Section 9 of the Suits Valuation Act and Section 9 also refers only to suit and not to other proceedings. The question therefore is whether a petition instituted under the Hindu Marriage Act can be regarded as a suit within the meaning of Section 9 of the Suits Valuation Act or within the meaning of rule 311 of the rules framed thereunder.

(5) It is significant to note that the Legislature has deliberately used the word 'petition' and proceedings under the Hindu Marriage Act are to be initiated by a petition. The word 'suit' is so common that it is impossible to conceive that it would escape the attention of the Framers of the law. It is noteworthy that the word 'suit' has been used in respect of matrimonial proceedings under the Indian Divorce Act. That shows that the word 'petition' must have been deliberately employed by the Legislature with the object of distinguishing these proceedings from ordinary suits.

(6) Mr. Khare relying on the decision of the Madras High Court reported in *Balakotayya v. Nagayya* : AIR1946 Mad509 contended that the word suit should be extended to any proceedings in a Court of Justice by which an individual pursues that remedy in a Court of Justice which the law affords him; that the

modes of proceeding may be various, but that if a right is litigated between the parties in a Court of Justice the proceeding by which the decision of the Court is sought is a suit. In view of the fact that the Legislature has deliberately used the word 'petition' in the Hindu Marriage Act it is not possible for us to accept the extended meaning of suit as propounded by the Madras High Court in above ruling. If that is so then the provisions of rule 311 will have to be confined only to suits and cannot be extended to petitions under the Hindu Marriage Act. In that view of the case it is not necessary to take into account the artificial valuation put on a matrimonial proceeding by the provisions of rule 311.

(7) Then the question is whether it is possible or necessary to put any valuation upon the claims made in proceedings under the Hindu Marriage Act. Reliefs claimed in these proceedings are either for restitution of conjugal rights or for divorce or for custody of wife and children and so on. these reliefs are in the very nature of things incapable of valuation in terms of the market value. Further, when a special Courts has been created as the Court having exclusive jurisdiction it is hardly necessary to put pecuniary valuation on the relief claimed. Pecuniary valuation becomes necessary to locate the Court where the proceedings are to be instituted. It is also necessary for choosing the Court of lowest grade, because, under Section 15 Civil Procedure Code where there is concurrent jurisdiction vested in more than one court, the suit has got to be instituted in the Court of the lowest grade. Such a problem does not arise when a Court of exclusive jurisdiction has been created for certain proceedings under a statute. That being the case, the decrees and orders passed in proceedings under the Hindu marriage Act cannot fall in any of the categories specified in Section 20 of the C. P. and Berar Courts Act. Therefore, whether the decision has been given by the District Judge himself or by an additional District Judge it will have to be treated as a decision of the District Court and under clause (c) of Section 20, an appeal from such a decision would necessarily lie to the High Court.

(8) The Legislature has deliberately provided that the proceedings under the Hindu Marriage Act must be instituted in the District Court. Of course, under Section 3 of the Hindu Marriage Act it is open to the State Government to specify any other civil Court as a District Court. When that is done, different considerations would arise.

For instance, if the Court of a civil Judge is designated as a District Court for the purpose of the Hindu Marriage Act, then naturally appeal from the decisions of such Courts will lie to the District Court under clause (a) of Section 20 of the C. P. and Berar Courts Act.

(9) We therefore hold that the appeal filed before the District Court is not competent and direct that the same should be returned to the parties for being presented to the proper Court.

(10) Costs of this application will be costs in the cause. The rule is made absolute.

(11) Rule made absolute.

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