

**Mallappa Vs. Mallava**

**Mallappa Vs. Mallava**

**SooperKanoon Citation :** [sooperkanoon.com/373310](http://sooperkanoon.com/373310)

**Court :** Karnataka

**Decided On :** Jun-21-1960

**Reported in :** AIR1960Kant292; AIR1960Mys292; ILR1960KAR867

**Judge :** M. Sadasivayya and ;Iqbal Husain, JJ.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 3, 11, 12, 19 and 28; [Bombay Civil Courts Act, 1869](#) - Sections 7 and 8

**Appeal No. :** Misc. Appeal No. 187 of 1957

**Appellant :** Mallappa

**Respondent :** Mallava

**Judgement :**

**Iqbal Husain, J.**

(1) An interesting point of law is raised regarding jurisdiction. Briefly stated the facts leading up to this present appeal are as follows: Mallappa, the present appellant filed a petition in the Courts of the District Judge, Dharwar under Ss. 11 and 12 of Hindu Marriage Act, Act 25 of 1955 against his wife Mallava, the respondent in the present case. He alleged among other things that he was kidnapped and taken away from his home and by force and framed he was married to Mallava. That contention was met by Mallava who denied any such

force or fraud on her part or on the part of her relations for bringing about the marriage.

But on the other hand, she alleged that because the appellant fell in love with her, the marriage was celebrated thereby putting an end to the feuds and quarrels that existed between the respective families. In fact the hatchet was buried by this relationship. The petitioner-appellant prayed for declaring the marriage null and void. The case was transferred by the District Judge, to the Court of the Civil Judge, Senior Division, Dharwar, for disposal. The learned Civil Judge dismissed his petition, against which, Mallappa has filed the present miscellaneous appeal before this Court.

At the time of hearing of this appeal it was brought to the notice of this Court that the appellant who was a minor during the conduct of the case and was represented by his maternal uncle Shivappa as guardian has since attained majority. The guardian is therefore discharged and the appellant is permitted to pursue the remedies open to him.

(2) A preliminary objection was raised by Sri Reddy, the learned advocate for the respondent that no appeal lies to this Court against the order passed by the Civil Judge. On the other hand, an appeal lies to the Court of the District Judge at Dharwar in the first instance.

(3) There seems to be great force in the argument so advanced. A brief reference to a few provisions of the Hindu Marriage Act is necessary. Section 19 determines the Court to which the petition should be made and it runs as follows:

'19. 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 petition was, in the first instance, rightly presented to the Court of the District Judge, Dharwar which, in turn, transferred it for disposal to the Court of the Civil Judge, Senior Division, Dharwar. The other relevant section to be considered is S. 28 dealing with the enforcement of the decrees or orders and the appeals

therefrom which runs as follows:

'All decrees and orders made by the Court in any proceeding under this Act shall be enforced in like manner as the decrees and orders of the Court make in the exercise of its original, civil jurisdiction are enforced and may be appealed from under any law for the time being in force: Provided that there shall be no appeal on the subject of costs only.'

(4) This section consists of two parts. (1) The enforcement of such decrees or orders should be regarded as those made by the Court in the exercise of its original civil jurisdiction. (2) The other part relates to the appeal therefore. It does not specify to which Court the appeal should be preferred, but advisedly leaves it to be determined according to the law for the time being in force. On the basis, of this section, as well as S. 3(b) it is urged by Sri Malimath, the learned counsel for the appellant that the Court of the Civil Judge, Senior Division, Dharwar, who decided this case should be regarded as the Court of original civil jurisdiction. If so, the jurisdiction of that Court is co-extensive with the jurisdiction of the District Court in matrimonial matters under the Hindu Marriage Act. Hence an appeal lies to the High Court.

(5) There is a fallacy in this argument. S. 3(b) defines a District Court as follows:

"District Court' means, in any area for which there is a city civil Court, that Court, and in any other area 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 definition applicable is 'in any other area, the principal civil Court of original jurisdiction'. Then follows the inclusion clause which determines the other civil courts as having jurisdiction. The Court of the Civil Judge, Senior Division, comes within the purview of the latter clause. A cursory reading of this definition may give an impression that any other civil Court so specified is also a District Court. But a careful serenity will reveal that such a construction is erroneous.

The civil Court that may be specified cannot be equated to the principal civil Court of original jurisdiction. The latter is a category by itself. It is the principal Court as distinguished from a subordinate Court. Just because the State Government specifies that certain subordinate civil Courts may also exercise jurisdiction in respect of the matters arising under the Hindu Marriage Act by no stretch of imagination could we designate them as principal Civil Courts of original jurisdiction.

(6) As stated above, S. 28 of the Act has advisedly refrained from mentioning the Courts to which an appeal lies from the decrees and orders made by the Court in any proceeding under this Act. But, it in unmistakable terms, states that such decrees and orders may be appealed from 'under any law for the time being in force'. So one has to look to the law which determines the forum of appeal.

So far as Bombay area is concerned, the relevant law is the Bombay Civil Courts Act (Act 14 of 1869.). Section 7 states that the District Court shall be the principal Court of Civil original jurisdiction in the District within the meaning of the C.P.C. Section 8 states that the District Court shall be the Court of appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. Applying these provisions it is abundantly clear that the Court of appeal from any decrees or orders passed by the Civil Judge, Senior Division, Dharwar, is the District Court of Dharwar and not the High Court. Hence the forum selected by the present appellant is a wrong one.

(7) A recent Bench decision of the Bombay High Court in *Gangadhar Rakhmaji v. Manjulal Gangadhar*, AIR 1960 Bom 42, is on all fours with the facts of the present case. An appeal from an order on petition for divorce passed by the Civil Judge, Senior Division of Ahmadnagar was filed in the Bombay High Court. Similar contentions were raised to the effect that the High Court had jurisdiction to hear the appeal as the Court of the Civil Judge should be deemed to be a District Court. Repelling that, contention their Lordships of the Bombay High held as follows:

'The Court of the Civil Judge, Senior Division, which is notified by the State Government as having jurisdiction in matters dealt with under the Hindu Marriage Act, is a 'District' Court within the definition of S. 3(b) of the Hindu Marriage Act,

but it is not principal civil Court of original jurisdiction, nor does it exercise its jurisdiction as such principal civil Court of original jurisdiction. Section 28 of the Hindu Marriage Act leaves the forum of appeal to be determined under the law for the time being in force which, in the present case, is the Bombay Civil Courts Act. The forum of appeal from the order or decree of the Court of the Civil Judge, Senior Division under the Bombay Civil Courts Act is the Court of the District Judge of the District. In the present case, therefore, which was decided by the Civil Judge, Senior Division, the appeal lies to the Court of the District Judge and not to the High Court.'

Similar in effect is a recent decision of the Madras High Court of Valliammal Ammal v. Periaswami Udayar, : AIR1959 Mad510 . It was held that both under the provisions of S. 28 of the Act as well as the general principles of law, an appeal lies against the decree in matrimonial cause to that Court to which appeals generally lie when a decree or order of the Court to which jurisdiction is granted. In another part of the judgment this is what his Lordship Ramachandra Iyer, J., says:

'The definition of the 'District Court' under S. 3(b) does not mean that a Court which is notified by the State Government becomes a District Court. What the section provides is that ordinarily it is the Civil Court or the District Court that would have jurisdiction to adjudicate disputes under the Act. But power is given to the State Government to designate by notification other Courts as well. By virtue of the notification other Courts will have jurisdiction as such Courts and not as a District Court, and it cannot be held that for the purpose of the Act, Courts other than the District Court would by virtue of the notification become a District Court. It would, therefore, follow that if by virtue of the notification under S. 3(b) a Court other than the District Court is given jurisdiction under the Act, it is only an extension of jurisdiction of that Court and appeals under S. 28 of the Act would lie only to that forum to which appeals generally lie from the decree and orders of that Court.'

The principles laid down in the cases referred to above fully apply to the facts of the present case. I therefore hold that the appeal filed in this Court is not maintainable.

(8) Sri Malimath, the learned advocate for the appellant urges that in case the contention that no appeal lies to the District Court in the first instance is upheld, he may be permitted to take back the appeal memo and the other papers filed by him with permission to present the same to a proper Court. I consider this request to be reasonable and order accordingly.

(9) As regards costs, however, we direct each party to bear his or her own costs of this appeal.

**Sadasivayya, J.**

(10) This appeal is directed against the decision of the Civil Judge, Senior Division, Dharwar, dismissing a petition which had been filed under Sections 11 and 12 of the [Hindu Marriage Act, 1955](#) (hereinafter referred to as 'the Act'). The short question for determination is whether from such a decision of a Civil Judge, Senior Division, an appeal lies to the High Court. Section 28 of the Act which provides for appeal from decrees and orders made in any proceedings under the Act, does not specify the forum to which such appeal should lie, but merely states that all decrees and orders made by the Court in any proceedings under the Act may be appealed from under any law for the time being in force.

Section 8 of the [Bombay Civil Courts Act, 1869](#) states that (except as provided in Ss. 15, 17 and 26, which are not relevant for the present purpose) the District Court shall be the Court of appeal from all decrees and orders passed by the Subordinate Courts from which an appeal lies under any law for the time being in force. When S. 28 of the Act is read with S. 8 of the Bombay Civil Courts act, 1869 it would appear that it is to the District court that appeals would lie from the decrees and orders made by a Civil Judge, Senior Division, in proceedings under the Act.

The language of S. 28 of the Act does not, in any way, support an argument to the effect that appeals from such decrees and orders would lie only to the High Court; if it had been the intention of the Legislature that the High Court alone should be the forum of appeal from all decrees and orders made in proceedings under the Act, it would have been so clearly stated in S. 28. But, the argument of Sri

Malimath is that by virtue of the notification issued by the Government under S. 3(b) of the Act, the Court of a Civil Judge, Senior Division, should be considered to be a District Court and that, therefore, an appeal from any decree or order made by that Court in proceedings under the Act, will lie only to the High Court.

This does not appear to be a sound contention. It is no doubt true that under S. 3(b) of the Act the expression 'District Court' means also a '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 the Act. But, such a notification cannot have the effect of converting that Court into a District Court within the meaning of S. 7 of the [Bombay Civil Courts Act, 1869](#). The fact that a civil Court has been so notified under S. 3(b) of the Act can be of no relevance for the purposes of s. 28 when there is no mention of 'District Court' in that section.

The forum for appeal from any decree or order made by any Court in any proceedings under the Act has to be determined with reference to the provisions of the [Bombay Civil Courts Act, 1869](#); if such a decree or order has been made by a court which is subordinate to the District Court, then under S. 8 of the [Bombay Civil Courts Act, 1869](#), an appeal lies to the District Court. The decision sought to be appealed from in this case is one given by the Court of a Civil Judge, Senior Division, which is a Court subordinate to the District Court under the [Bombay Civil Courts Act, 1869](#); therefore, the forum of appeal is only the District Court.

This view finds support in the decisions reported in : AIR1959 Mad510 and AIR 1960 Bom 42. The appeal memo and the relevant papers will be returned for being presented to the proper Court. I agree to the order proposed by my learned brother.

(11) Order accordingly.