

**M. Lakshmi Devi Vs. M. Lakshmi Devi and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/380901](http://sooperkanoon.com/380901)

**Court :** Karnataka

**Decided On :** Feb-24-1998

**Reported in :** 1999(4)KarLJ33

**Judge :** Hari Nath Tilhari, J.

**Acts :** [Family Courts Act, 1984](#) - Sections 7(1) Explanation and 8; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9, 96 and 107; [Evidence Act, 1872](#) - Sections 59

**Appeal No. :** Regular First Appeal No. 1 of 1989

**Appellant :** M. Lakshmi Devi

**Respondent :** M. Lakshmi Devi and Others

**Advocate for Def. :** Sri M.L. Dayananda Kumar, Adv.

**Advocate for Pet/Ap. :** Sri G.V. Thirumale, Adv.

**Judgement :**

Acts/Rules/Orders:

[Family Courts Act, 1984](#) - Sections 7(1) Explanation and 8; Civil Procedure Code, 1908 - Sections 9, 96 and 107; Indian [Evidence Act, 1872](#) - Section 59

Cases Referred:

Ram Chandra v. Muneshwar and Others, AIR 1962 All. 248;Mt. Kundan Bibi v. Magan Lal, AIR 1932 All. 710;Kiran Singh and Others v. Chaman Paswan, AIR 1954 SC 340;Sarju Pershad Ramdeo Sahu v. Jwaleshwari Pratap Narain Singh and Others, AIR 1951 SC 120

## **JUDGEMENT**

1. This appeal arises from the judgment and decree dated 17-9-1988 passed by Sri M.P. Chinnappa, IV Additional City Civil Judge, Mayo Hall, Bangalore, in O.S. No. 10372 of 1983 whereby the Trial Court had decreed the plaintiffs' suit and held that the plaintiff had been legally wedded wife of the deceased Yellaiah and plaintiffs 1 to 3 are entitled for terminal benefits and other benefits as well as issued decree for mandatory injunction directing the defendant 1 in the suit namely the Commercial Works Engineer, Dickenson Road, who is respondent 4 in the appeal to give effect to all the benefits for which the plaintiffs are entitled according to law.

2. Plaintiff in the suit claimed to be the legally wedded wife of M. Yellaiah and their marriage took place in the year 1966. Plaintiff-respondent further alleged that plaintiff gave birth to two children namely Saraswathi and Ramesh from the said legal wedlock. Plaintiff alleged that her husband was working as Chowkidar in Garrison Engineers in M.E.S. and he worked in different places namely Bangalore, Secundrabad, Aurangabad, Poona and finally he was working at Bangalore. M. Yellaiah died on 16-7-1982. Plaintiffs case is that deceased Yellaiah executed documents in favour of the defendant for the payments of terminal benefits and other benefits in favour of the plaintiff and the address given by him was at 4-60, Kowkooor Village, Bolaram Post, Secunderabad-11. Plaintiff claimed that after the death of her husband, she has obtained heirship certificate from the Collector and Additional District Magistrate, Hyderabad. She had written number of letters and called upon the first defendant to settle the terminal benefits, pension etc. Thereafter, the defendant 1 finally wrote a letter dated 28-4-1983 asking her to approach the Court of law for declaration and so suit was filed.

3. The 1st defendant did not file any written statement. 2nd defendant got herself impleaded by filing I.A. II and thereafter she filed her written statement resisting

the claim of the plaintiff on the ground that the plaintiff is not the legally wedded wife of deceased Yellaiah and the children were not born from the alleged marriage. Defendant 2 claims herself to be the legally wedded wife of Yellaiah and claimed that she is entitled for all the emoluments and terminal benefits after his death. She also claims to have begotten two children from her marriage with deceased Yellaiah. She also denied that Yellaiah executed documents in favour of the plaintiff. She alleges that plaintiff's allegations are false. Though defendant alleges that plaintiff got executed the document by Yellaiah by fraud and misrepresentation, she claims herself to be entitled for payment of all the terminal benefits after the death of Yellaiah. She alleges that plaintiff's suit was not maintainable and liable to be dismissed. Subsequently, Saraswathi and Master Ramesh who are brought on record, also filed written statement.

4. On the basis of the pleadings of the parties, Trial Court framed the following issues.-

(1) Whether the plaintiff proves that she is the legally wedded wife of M. Yellaiah and two children were begotten from the said wedlock as alleged?

(2) Whether the second defendant proves that she is the legally wedded wife of M. Yellaiah and solely entitled to get all emoluments and other benefits as alleged?

(3) Whether the defendant 2 proves that the plaintiff obtained documents by playing fraud and misrepresentation?

(4) Whether the plaintiff proves that she and her children are the only legal heirs of M. Yellaiah?

(5) Whether the plaintiff is entitled for declaration as sought for?

(6) What order or decree?

5. The Trial Court after appreciating the oral and documentary evidence including the circumstantial one, held that defendant 2 had failed to establish and prove her status as wife of Yellaiah. It further found that plaintiff was successful in proving herself to be the legally wedded wife of Yellaiah. Trial Court further held that

defendant 2 failed to prove that the plaintiff obtained documents by playing fraud and misrepresentation. It held that plaintiff and her children are the only legal heirs of deceased Yellaiah and were entitled to get the amount from 1st defendant and as such, decreed the plaintiffs' claim in toto.

6. Having felt aggrieved from the judgment and award of the Trial Court, the defendant 2 has come up with an appeal before this Court under Section 96 of the CPC. I have heard Sri G.V. Thirumale, learned Counsel for the appellant and Sri M.L. Dayananda Kumar, learned Counsel for the respondents 1 to 3 as well as Ms. Pearl Mathew, learned Counsel.

7. The first point that has been made by the learned Counsel for the appellant is to the effect that decree passed by the Court below is illegal and without jurisdiction in view of provisions of Sections 7 and 8 of the [Family Courts Act, 1984](#). It has been contended that under Section 8 it has been provided that when once the Family Court has been established for any area, then all suits instituted and proceedings taken before this Act and pending before the Civil Court shall stand transferred to the Family Court on its establishment and as such, learned Counsel contended that the Civil Court had no jurisdiction to decree the suit. Learned Counsel contended that so far as findings on other issues recorded he does not challenge and it depends on appreciation of evidence. But it is a pure question of jurisdiction. Learned Counsel contended that as the Civil Court had no jurisdiction to deal with the suit after the establishment of this Family Courts on June 1, 1987, the proceedings of the case had to be transferred to the Family Court and Civil Court could not pass orders and decree the suit. As such, decree is nullified and liable to be set aside. At the most, case may be remanded back for trial afresh by the Family Court. Learned Counsel for the appellant further submitted that the finding recorded on the question of marriage of plaintiff with the deceased Yellaiah is erroneous and the Court below wrongly placed reliance on the plaintiffs witnesses and erred in holding the defendant's evidence to be unreliable. No other contention has been raised challenging any of the findings recorded by the Trial Court on behalf of the appellant.

8. The contentions of the appellant's Counsel have been hotly contested by the learned Counsel for the respondents Sri M.L. Dayananda Kumar. Sri Kumar contended that no such plea was raised at any stage before the Trial Court nor did the appellant raise any objection to the Trial Court's deciding the case. As such, at this stage, it is not open to the appellant to raise that objection. Learned Counsel further submitted that Civil Court had jurisdiction to entertain suit when it was filed. Learned Counsel further contended that Court could have directed the transfer of suit to Family Court if the suit comes within the four corners of the suit of the nature of the suit described in Section 7. Learned Counsel for the respondents contended that here the suit is not only for declaration of matrimonial status. Here the suit is primarily for a direction to the respondent 4 i.e., defendant 1 to pay the service benefits to which deceased Yellaiah was entitled or that accrued after his death for being paid to the plaintiff, no doubt, only after having decided the question that plaintiff was the legally wedded wife of the deceased. Learned Counsel contended that if the suit would have been simply for declaration and the main and principal relief would have been declaration, then it could be said that such a suit should be transferred to the Family Court, otherwise, if the suit is not primarily for declaration of matrimonial status and the primary relief is not that one, but there is other relief and which is really the principal relief in the circumstances which was within the jurisdiction of the Civil Court to try the suit, then it cannot be said to be required to be transferred to the Family Court. Learned Counsel contended that primarily Family Court deals with the disputes regarding matrimonial status. Therefore, learned Counsel contended that this suit would not come within the purview of Section 7. It has been a suit where the plaintiff has sought for a principal relief of direction against respondent 4 for payment of emoluments and benefits etc., which the heirs of the deceased would be entitled to. So the learned Counsel contended that this suit cannot be said to be affected by Sections 7 and 8 of the Family Court's Act.

9. I have applied my mind to the contentions made by the learned Counsel for the parties. No doubt it is well-settled principle of law that a decree if it is without jurisdiction and nullity, consent of the parties will not make it valid. If a decree is passed by a Court which had no jurisdiction to entertain such suits, the decree being nullity may not be said to be binding even if there is any consent of the

parties. Where decision on a pure question of law is there which is going to the route of jurisdiction and which really has the effect of determining the jurisdiction and there is no dispute about the facts, the question of jurisdiction being pure and simple, it is open to the party to raise it even at the later stage of first appeal or second appeal and it is well-settled that if it is a pure question of jurisdiction or a question going to the route of jurisdiction of the Court is there and which is pure question of law, which is raised at first appellate stage or second appellate stage, it has to be decided. I find support from the Division Bench decision of Allahabad High Court in the case of Ram Chandra v Muneshwar and Others. I further find support for my view from another decision of the Allahabad High Court in the case of Mt. Kundan Bibi v Magan Lal. In the case of Kiran Singh and Others v Chaman Paswan, it has been laid down as under.-

'It is a fundamental principle that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties'.

In my opinion, as such, the appellant is to be permitted to raise this question and this Court has to determine whether the decree passed by the Court below suffers from error of jurisdiction and nullity. In this context, it would be profitable to refer to Section 7 of the Family Courts Act.

Sub-section (1) of Section 7 provides that:

'Section 7(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 Courts extends.

Explanation.--The suits and proceedings referred to in the subsection are suits and proceedings of the following nature, namely.-

(a) .....

(b) a suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person.

(c) ..... (not material) .....

(d) ..... (not material) .....

(e) ..... (not material) .....

(f) ..... (not material) .....

(g) ..... (not material) .....

(2) ..... (not material) .....

(8) Exclusion of jurisdiction and pending proceedings.-

Where a Family Court has been established for any area.-

(a) 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 proceedings of the nature referred to in the explanation to that sub-section;

(b) xx xx xx xx;(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of Section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973.-

(i) .....

(ii) which would have been required to be instituted or taken before or by such Family Court if, before the date on which such suit or proceeding was instituted or taken this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established'.

A reading of these sections clearly reveals that no doubt Family Court has been given jurisdiction, I may say exclusive jurisdiction to try and decide the suit or proceedings as referred to in Section 7 or explanation to Section 7(1), it has been provided that once Family Court has been established for an area then no district Court or any Civil Court shall have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the explanation and the suits pending on the date of establishment or on the date of coming into force of the Act as well as on the date of establishment of Family Court shall automatically stand transferred to such Family Court on the date of its establishment. Section 8 no doubt has the effect of excluding jurisdiction of District Court or Civil Court and it has the effect of conferring exclusive jurisdiction on such Family Court to try and decide suits or proceedings which can be said to be covered by category of suits or proceedings as mentioned in explanation to Section 7. It is also one of the trite principles of civil law that exclusion jurisdiction of Civil Court may have to be expressly provided or it may be the result of necessary implication. Clause (b) which has been brought to my notice and on which appellant's Counsel placed reliance provides that a suit or proceedings for a declaration as to the validity of a marriage or as to the matrimonial status of any person. If the suit or proceedings is primarily for decree for declaration for validity of marriage or decree for matrimonial status no doubt, dispute had to be decided by the matrimonial Court after its coming into force and all suits pending before the Civil Court will automatically stand transferred to the Family Court. But where in cases the principal and effective relief is not merely declaration of matrimonial status but the cause of action in the suit and the relief claimed is something more, such as decree for directing the employer to pay the emoluments or benefits accruing on the death of husband and the plaintiff has claimed that relief, then the question crops up is whether such a suit can be said to be barred in view of Sections 7 and 8 of the Act and such a suit stand transferred to the Family Court. Section 7 does not confer a jurisdiction to the Family Court to entertain suits for injunction, suits

for possession or suits for giving direction to third party to pay money or emoluments payable to the heirs of the deceased employee. Such a suit cannot be said to be a suit primarily for the relief for declaration of matrimonial status. The cause of action in such a suit is really failure of the employer to pay the amount and asking the heir to bring a certificate or to seek a relief from the Court. Here in a suit like the present one, the primary claim is decree for direction to the employer to pay the terminal benefits of gratuity etc., which became due and payable on the death of Sri M. Yellaiah. No doubt even without claiming any declaration the Court could grant a decree after deciding the question whether the plaintiffs were the legal heirs being wife and children of the deceased or not.

10. Thus considered in my opinion, the principal relief claimed is decree for direction to the employer to pay the amount due and no doubt it is ancillary to decide the question whether the plaintiffs are the legal heirs of the deceased i.e., whether the plaintiff 1 is the wife and whether the plaintiffs 2 and 3 are the children of the deceased. In this view of the matter, in my opinion, this case cannot be said to come within the purview of Section 7 clause (b) of Family Courts Act and as such a reading of Sections 7 and 8 along with sub-section (c) and clause (ii) it cannot be validly contended that such a suit should be transferred to the Family Court nor such a contention can be accepted. This suit not being a suit for validity of marriage and this suit being a suit for direction to third party to pay the money after determining the status of the parties as legal heirs being the married wife and children, this suit is entertainable even prior to coming into force of this Act, by the Civil Court. The subject-matter of suit and principal relief claimed in the suit not being covered and not coming within the four corners of Section 7 of the Family Courts Act in my opinion it was within the competence of Civil Court to have decided a case on merits and Section 8 did not prevent a Civil Judge to decide the case and Section 8(ii) does not apply and there is no question of suit having transferred to the Family Court.

11. As regards the question of fact, the Trial Court has well considered the evidence of the parties and has held that plaintiff had been legally married wife and her marriage has been proved while defendant's marriage had not been proved. This finding is based on consideration of evidence and it has not been

contended by the learned Counsel for the appellant that anything substantial has escaped the notice of the Trial Court. When I was concluding the judgment, the learned Counsel for the appellant tried to raise the finding of fact and challenged the finding. It is one of the well-settled principles of law under Section 107 of the Civil Procedure Code, 1908, that ordinarily where there is conflicting oral evidence of the parties on any matter of issue and decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the Trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the Appellate Court should not interfere with the finding of the Trial Judge on a question of fact. This view has been supported by a Division Bench of Supreme Court in the case of Sarju Pershad Ramdeo Sahu v Jwaleshwari Pratap Narain Singh and Others. The present case is not a case of sufficient balance of improbability and no special feature about the evidence of a witness which may be said to have escaped the notice of Trial Court has been pointed out, as such, this Court need not interfere with the finding of fact that plaintiff is the legally wedded wife of the deceased which the defendant has failed to establish. The Trial Court has only relied on the evidence of P.W. 1 and P.W. 2 after having held that the evidence of D.W. 2 as unreliable. In view of the above principle of law, I accept the finding of the Trial Court.

12. Thus considered in my opinion, the decree passed by the Trial Court decreeing the plaintiffs' suit directing the employer to pay amount to the plaintiffs-respondents has been validly decreed and it had full jurisdiction. The decree cannot be said to be without jurisdiction. No doubt, during the pendency of the case the amount has been paid to the defendant-appellant. It is open to the employer to get it refunded from her. But the employer has in every case to pay all amounts and terminal benefits to the heirs as found by the Court below to be legally entitled to get it. With these observations, the appeal is hereby dismissed. The decree of the Court below is affirmed, Parties to bear their own costs.