

Sumithra Devi Vs. G. Venkateshan

Sumithra Devi Vs. G. Venkateshan

SooperKanoon Citation : sooperkanoon.com/387383

Court : Karnataka

Decided On : Sep-03-1998

Reported in : (1999)155CTR(Kar)40; II(1999)DMC655

Judge : Hari Nath Tilhari, J.

Acts : [Family Courts Act, 1984](#) - Sections 19; [Constitution of India](#) - Article 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 6, Rule 17

Appeal No. : C.R.P. No. 1945 of 1994

Appellant : Sumithra Devi

Respondent : G. Venkateshan

Advocate for Def. : S. Raju and ;K.L. Manjunath, Adv.

Advocate for Pet/Ap. : Geetha Menon, Adv. for ;M.N. Pramila Nesargi, Adv.

Disposition : Petition dismissed

Judgement :

Hari Nath Tilhari, J.

1. Heard Smt. Geetha Menon for Smt. M.N. Pramila Nesargi, learned Counsel for the petitioner, and Mr. S. Raju for Mr. K.L. Manjunath, learned Counsel for the respondent.

2. This civil revision under Section 115 of C.P.C. has been preferred by the respondent before the Appellate Court from the order of the Family Court dated 18.4.1994 allowing the amendment of the petition for divorce in which in alternative the petitioner has sought a decree for judicial separation on the basis of same facts and allegations that have been contained in the petition for divorce. The amendment sought has been quoted in paragraph 1 of the order of the Court below. If the relief for judicial separation has also been claimed in alternative to the decree for divorce on the basis of same facts and allegations, it may at the most amount to an additional approach to the same facts and additional relief on same facts and so it could not be said to be amounting to a new case and the Court below has rightly held that no irreparable loss is going to be caused to the present petitioner who had been respondent before the Family Court.

3. Looking to the approach, I do not find that the order impugned is such that it may require interference even either under Article 227, what to say of petition under Section 115. As regards revision from the order of the Family Court, the revision itself is not maintainable from the order of the Family Court in view of Sub-section (5) of Section 19. Section 19 reads as under :

'Section 19 : Appeal -

(1) Save as provided in Sub-section (2) and notwithstanding anything . . contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law an appeal shall lie from every judgment or order not being an interlocutory order of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974).

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991. and

(3) Every appeal under this section shall be preferred within a period of 30 days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situated within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purposes of satisfying itself as to the correctness, legality or propriety of the order not being an interlocutory order and so as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any Court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under Sub-section (1) shall be heard by a Bench consisting of two or more judges.'

4. Thus a reading of Section 19 clearly reveals that no revision is maintainable from the order of Family Court, allowing the amendment of plaint.

5. Thus having considered the matter in the light of Section 19 of Family Courts Act as well as keeping in view Article 227,1 find that there is no good ground for interference with the order impugned. Petition, as such, is hereby dismissed.