

Arjun Singhal Vs. Pushpa Karwal

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Court : Madhya Pradesh

Decided On : Sep-26-2002

Reported in : AIR2003MP189; 2002(4)MPHT321; 2003(3)MPLJ80

Judge : S.P. Khare, J.

Acts : [Family Courts Act, 1984](#) - Sections 3, 7 and 8; [Hindu Marriage Act, 1955](#) - Sections 19; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 113

Appeal No. : Misc. Civil Case No. 695/2002

Appellant : Arjun Singhal

Respondent : Pushpa Karwal

Judgement :

ORDER

S.P. Khare, J.

1. This is a reference under Section 113, CPC by the Fourth Additional District Judge, Jabalpur for the opinion of this Court on the point whether the case is triable by him or the Family Court, Jabalpur which has been established by the notification dated 4-3-2002 by the State Government in exercise of the powers under Section 3 of the [Family Courts Act, 1984](#) (hereinafter to be referred to as 'the Act').

2. According to the aforesaid notification the Family Court, Jabalpur has the territorial jurisdiction within the area specified in column No. 4 of the Schedule appended thereto. That area is 'limits of the Municipal Corporation, Jabalpur including Cantonment area'. Section 19 of the [Hindu Marriage Act, 1955](#) provides that every petition under this Act shall be presented to the District Court within the local limits of whose ordinary civil jurisdiction (i) the marriage was solemnized; or (ii) the respondent, at the time of the presentation of the petition, resides; or (iii) the parties to the marriage last resided together; or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

3. After the establishment of the Family Courts the words 'District Court' in Section 19 of the [Hindu Marriage Act, 1955](#) shall be deemed to have been substituted by the words 'Family Court' as per Section 7 of the Act in respect of the area over which it has territorial jurisdiction. The notification issued under Section 3 of the Act has to be read with the provision relating to conferral of the territorial jurisdiction under the [Hindu Marriage Act, 1955](#) in respect of the cases arising under that Act. That would also be the position in respect of the cases arising under the other allied Acts which have to be taken cognizance of by the Family Courts. Section 19 of the [Hindu Marriage Act, 1955](#) enables the petitioner to present the petition under this Act at his or her option at any of the places specified in clauses (i) to (iv) and, therefore, if the petition so presented falls within the territorial jurisdiction of the Family Court, then the Family Court of that area would have the exclusive jurisdiction to entertain and try that petition under Section 8 of the Act and such pending proceedings would also stand transferred to such Family Court.

4. In the present case the averments in the petition are that the marriage between the parties was solemnized at Jabalpur and the respondent resides at Jabalpur within the Municipal area of Jabalpur and therefore, as per clauses (i) and (ii) of the [Hindu Marriage Act, 1955](#) the Family Court at Jabalpur would have exclusive jurisdiction to deal with this case. The Family Court returned the case to the Court

of Fourth Additional District Judge on the application of the petitioner for transferring the case of to that Court on the ground that the petitioner resides in Village Bilhari which is outside the limits of the Municipal Corporation, Jabalpur. The place of residence of the petitioner in this case was not material as this case is not covered by clause (iv) of Section 19 of the Act of 1955. It is not the case of the petitioner that the respondent resides outside the territory to which this Act extends or he has not been heard of as alive for a period of seven years. Clause (iv) being inapplicable the order dated 17-5-2002 of the Family Court, Jabalpur is not in conformity with the law.

5. The Court of Fourth Additional District Judge, Jabalpur is directed to send this case to the Family Court, Jabalpur. A copy of this order be sent to all the Family Courts as problems of this nature might arise before them also.

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