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Court : Madhya Pradesh

Decided On : Dec-13-2007

Reported in : 2008(1)MPHT267

Judge : Arun Mishra and ;Sanjay Yadav, JJ.

Appellant : B. Raman

Respondent : To Whom So Ever

Disposition : Appeal allowed

Judgement :

ORDER

Sanjay Yadav, J.

1. In the present appeal filed under Section 19 of the Family Courts Act, 1984 (hereinafter referred to as 'Act of 1984'), the legality and validity of order dated 31-10-06 passed by the Presiding Judge, Family Court, Bhopal in MJC No. 57/06 is being questioned. By the impugned order, the Family Court while allowing the guardianship of the person of V. Raghawan has declined the claim of the appellant to regulate the bank account of V. Raghawan.

2. The facts in nutshell are that V. Raghawan is the son of K.S. Venkatramani and V. Rajeshwari. K.S. Venkatramani was employed as Temporary Analyst in Town

and Country Planning Organisation, E-Block, Vilas Bhawan, New Delhi. He expired on 31-7-67, leaving behind his wife V. Rajeshwari and son V. Raghawan, a mentally ill person admitted in Dr. Bose Memorial Hospital Chennai. After the death of her husband V. Rajeshwari came to Bhopal and lived with her brother, the present appellant, who was at relevant time posted in BHEL. That V. Rajeshwari, mother of V. Raghawan expired on 10-1-2001. During her lifetime V. Rajeshwari met medical expenses for the treatment of her son from the pension she received in lieu of her husband's service. That after the death of V. Rajeshwari, the appellant is looking after V. Raghawan. That V. Rajeshwari was having joint account along with her mother B. Laxmi in Indian Overseas Bank Mayiladutharai, Savings Bank A/c No. 19553 having Rs. 28,840.28; Canara Bank Mayiladutharai, Savings Bank A/c No. 6419 of Rs. 41,574.42; State Bank of India, Mayiladutharai, Savings Bank A/c No. 01190018275 01190018275 of Rs. 18,807.04 and Fixed Deposit in SBI to the tunc of Rs. 30,000/-, Canara Bank for an amount of Rs. 31,192. 48. That B. Laxmi, mother of the appellant and V. Rajeshwari, also died on 28-5-2000 leaving behind V. Raghawan as the sole successor. It was to declare himself as guardian of the V. Raghawan and to operate the aforesaid Bank A/cs, the appellant filed an application under Section 7 of the Family Courts Act, 1984 read with the provision of Guardian & Wards Act, 1890. The Family Court while entertaining the appellant's claim for the guardianship of V. Raghawan has declined the permission to operate the aforesaid Bank A/cs. The appellant is aggrieved of refusal of permission to operate the Bank A/cs belonging to V. Raghawan and therefore, this appeal.

3. The solitary issue, which therefore crops up for consideration in the present appeal is whether the Family Court was justified in declining the claim of the appellant to operate the Bank A/cs on the ground that it has no jurisdiction to grant the permission to operate the said A/c.

4. Before we advert upon the aforesaid issue, we may not the relevant provisions of the Family Courts Act, 1984, and the Mental Health Act, 1987.

5. The Family Court's Act, 1984 (referred to as 'Act of 1984') was enacted in the year 1984 to provide for the establishment of Family Courts with a view to promote

conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The said Act of 1984 is in enforcement in the State of Madhya Pradesh w.e.f. 19-11-1986, vide Notification No. 79/18/85-Jus. dated November 14, 1986 and the Family Court at Bhopal came to be established vide Notification No. F-4/1/2002/XXI/B (I), dated 4-3-2002 w. e. f. 8-3-02, inter alia providing that it will have jurisdiction within limits of Municipal Corporation, Bhopal including Cantonment Area, if any.

Sections 7, 8 and 20 of the Act of 1984, respectively provides for:

7. Jurisdiction.--(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 Court extends.

Explanation: The suits and proceedings referred to in this Sub-section are suits and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

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

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceedings for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

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 proceeding of the nature referred to on the Explanation to that Sub-section;

(b) no Magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

(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 (2 of 1974),--

(i) which is pending immediately before the establishment of such Family Court before any District Court or Subordinate Court referred to in that Sub-section or, as the case may be, before any Magistrate under the said Code; and

(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.

20. Act to have overriding effect.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this act.

6. The Mental Health Act, 1987 (hereinafter referred to as 'the Act of 1987') was enacted to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

Section 2 (b) stipulates:

2. (b) 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 the State Government may, by notification, specify as the Court competent to deal with all or any of the matters specified in this Act.

7. Chapter VI makes provision for Judicial Inquisition Regarding Alleged Mental 111 person possessing property, custody of his pension and management of his property. Section 52 stipulates:

52. Provision for appointing guardian of mentally ill person and for manager of property.--

(1) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of taking care of himself and of managing his property, it shall make an order for the appointment of a guardian under Section 53 to take care of his person and of a manager under Section 54 for the management of his property.

(2) Where the District Court records a finding that the alleged mentally ill person is in fact mentally ill and is incapable of managing his property but capable of taking, care of himself, it shall make an order under Section 54 regarding the management of his property.

(3) Where the District Court records a finding that the alleged mentally ill person is not mentally ill, it shall dismiss the application.

(4) Where the District Court deems fit, it may appoint under Sub-section (1) the same person to be the guardian and manager.

8. Whereas, Section 53 makes a provision for:

53. Appointment of Guardian of mentally ill person.--

(1) Where the mentally ill person is incapable of taking care of himself, the District Court or, where a direction has been issued under Sub-section (2) of Section 54, the Collector of the District, may appoint any suitable person to be his guardian.

(2) In the discharge of his functions under Sub-section (1), the Collector shall be subject to the supervision and control of the State Government or of any Authority appointed by it in that behalf.

Section 96. Stipulate Effect of Act on other laws.--The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force and to the extent of such inconsistency that other law shall be deemed to have no effect.

9. Thus, with the commencement of the Family Courts Act and with the establishment of Family Courts under Section 3 of the Act of 1984 and because of the exclusion of jurisdiction vide Section 8 of the Act of 1984, the Family Courts can exercise all the jurisdiction exercisable by any District Court or any Sub-ordinate Civil Court for the time being in force in respect of suits or proceedings in relation to the guardianship of the person or the custody of, or access to, any minor [Section 7(1)(b) Explanation (g)]. And though, the provisions of the Act of 1984 have the over-riding effect over other enactment by virtue of Section 20; however, the over-riding effect is to the extent of inconsistency in other law.

10. In the case of State of Bihar and Ors. v. Bihar Rajya M.S.E.S.K.K. Mahasangh : (2005)9SCC129 , in Paragraph 47 Their Lordships of the Apex Court were pleased to hold that non-obstante clause are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principal enacting provision to which the non-obstante clause is attached.

11. Thus to the extent the provisions of Mental Health Act, 1987 are not inconsistent with that of the Act of 1984, they are applicable and are within the Jurisdiction of Family Court. A 'mentally ill-person' as defined under the Act of 1987 means 'a person who is in need of treatment by the reason of any mental disorder other than mental retardation'. We have seen from the facts of the present case that V. Raghawan is undergoing the treatment in Dr. Bose Memorial Hospital & Mental Institute, Chennai for last 25 years and the expenses of the same were borne by his mother V. Rajeshwari till she was alive and after her death the same treatment is being meted out by the appellant, as is reflected from the order under challenge. The Family Court in exercise of its jurisdiction as vested in it vide Section 7 of the Act of 1984 has appointed the appellant guardian of V. Raghawan, but has declined the relief to operate the bank accounts in lieu of V. Raghawan on the anvil that it does not have the jurisdiction. The question is whether the Family Court is justified in its dispensation.

12. In Principles of Statutory Interpretation of Law by Justice G.P. Singh, Tenth Edition, 2006, it has been observed by the Author at Page 720 thus:

The Courts make a distinction between jurisdictional questions of fact or law (also called collateral fact or law) and questions of fact or law which are not jurisdictional. If a question of fact or law is of the former category, the Tribunal though competent to inquire into that question cannot decide it conclusively, and a wrong determination of such a question results in making the final decision in excess of jurisdiction. But if a question of law or fact is of the latter category, the Tribunal's determination is final and conclusive.

13. In the case of Carona Ltd. v. Parvathy Swaminathan & Sons (2007) 8 SCC 559, it is observed by Their Lordships of the Apex Court in Paragraph 27 of the judgment as under:

.The fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act.

14. The Apex Court in the case of Carona Ltd. (supra), after referring to Halsbury's Laws of England and the judgments rendered in Choube Jagdish Prasad v. Ganga Prasad Chhaturvedi : AIR 1959 SC492 , Arun Kumar v. Union of India (2007) 1 SCC 732, Roshan Lal Mehra v. hhwarsDass, : [1962]2SCR947 , held in Paragraph 36 as under:

It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist. The Court or Tribunal has power to decide adjudicatory fact, or facts in issue.

15. Thus, having regard to aforesaid propositions, we are of the considered opinion that it is well within the jurisdiction of the Family Court to have passed orders regarding the operation of bank account of 'mentally ill person'. However, the exercise of such power would be subject to the provisions contained in the Mental Health Act, 1987. We accordingly allow the appeal with a direction to the Court below to issue appropriate orders keeping in view the provisions contained in Mental Health Act, 1987 in favour of the appellant in respect of regulation of bank account of V. Raghawan.

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