

Sindhu P.K. Vs. Sunil Kumar

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Court : Kerala

Decided On : Jul-03-2015

Judge : Honourable Mr.Justice v.K.Mohanan

Appellant : Sindhu P.K.

Respondent : Sunil Kumar

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE
MR.JUSTICE A.HARIPRASAD FRIDAY,THE3D DAY OF JULY2015/12TH
ASHADHA, 1937 RP.No. 507 of 2014 (R) IN OP (FC).4076/2013
----- AGAINST THE

JUDGMENT

IN OP (FC) 4076/2013 of HIGH COURT OF KERALA DATED2606-2014 REVIEW
PETITIONER(S)/RESPONDENT IN O.P:-:

----- SINDHU P.K.,
D/O.KESAVAN, AGED39YEARS, PALAPRA HOUSE, UMayATTUMKARA
THIRUVANVANDOOR VILLAGE, CHENGANNUR TALUK RESIDING AT
PULLAMPLAVIL HOUSE, KALLUNKAL P.O. THIRUVALLA - 689 101. BY ADV.
SRI.SAJITH KUMAR V. RESPONDENT(S)/PETITIONER AND2D RESPONDENT
IN THE O.P.(F.C):-:

SUNIL KUMAR P.A., S/O.ANNANDAN, AGED47YEARS NADUVILEMURIYIL PULLAMPLAVIL HOUSE NEDUMPROM VILLAGE, THIRUVALLA.

2. SABU RAVEENDRAN,S/O.RAVEENDRAN, AGED40YEARS ASARIPARAMBIL HOUSE, NEDUMPROM VILLAGE PATHANAMTHITTA DISTRICT. R1 BYADV.SRI.K.RAMACHANDRAN R1 BYADV.SRI.T.P.PRADEEP THIS REVIEW PETITION HAVING BEEN FINALLYHEARD ON1806.2015, THE COURT ON0307.2015 PASSED THE FOLLOWING: RP NO.507/2014 IN OP (FC) NO.4076/2013 APPENDIX REVIEW PETITIONER'S EXHIBITS: ANNEXURE A1 ATRUE COPY OF THE ORIGINAL PETITION OP8022010 OF THE FAMILY COURT,THIRUVALLA FILED BY THE FIRST RESPONDENT ANNEXURE A2 ATRUE COPY OF THE REPLYSTATEMENT IN OP8022019 OF THE FAMILY COURT,THIRUVALLA FILED BY THE REVIEW PETITIONER ANNEXURE A3 ATRUE COPY OF THE

JUDGMENT

DATED3003.2013 IN OP NO.431/13 OF THE FAMILY COURT,THIRUVALLA RESPONDENTS' EXHIBITS: NIL "C.R." V.K.MOHANAN & A.HARIPRASAD, JJ.

----- R.P. No.507 of 2014 in O.P.(FC) No.4076 of 2013
----- Dated this the 3rd day of July, 2015

ORDER

Hariprasad, J.

Review petitioner is the first respondent in an original petition filed under Article 227 of the Constitution of India. The first respondent herein is the petitioner in the above original petition. In the original petition, a direction was sought to the Judge, Family Court, Thiruvalla to draw up a decree in O.P(HMA) No.909/2008 in accordance with the judgment and a further direction to dispose of E.P.No.6 of 2013 within a time frame to be fixed by this Court.

2. This Court after hearing both sides disposed of the original petition directing the Court concerned to draft a decree in terms of Ext.P2 compromise executed and presented before the Court by the parties to the proceedings, leaving any

challenge against the executability of the decree open to be agitated in appropriate proceedings.

3. Grievances of the review petitioner are mainly the following: RP No.507/2014 in OP(FC) No.4076/2013 2 The stipulation in Order XX Rule 6 of the Code of Civil Procedure, 1908 (in short, "CPC") that a decree shall agree with the judgment has been violated and so much so the direction to draft a decree in terms of the compromise is an error apparent on the face of the judgment. Secondly, the original petitioner should have sought a review of the judgment before the trial court. He should not have been permitted to invoke the jurisdiction of this Court under Article 227 of the Constitution. Yet another contention is that there is no requirement of a separate decree, apart from the decreetal portion of the order, as per the terms of the Family Courts Act, 1984 (in short, "the Act") and Rules thereunder as the Court is not expected to follow the procedure prescribed in the CPC meticulously.

4. Heard Sri.Sajith Kumar, the learned counsel for the review petitioner and Sri.K.Ramachandran, the learned counsel for the contesting respondent.

5. In the light of the pleadings and on hearing the learned counsel, we think it apposite to frame the following points for determination. I. Whether the Family Courts are bound to draft decrees in suits or proceedings falling under Section 7(1) Explanation to the Act? II. If the parties compromise a matter pending before a Family Court, is it not bound to record the compromise/agreement and to pass a decree in accordance with such compromise/agreement? RP No.507/2014 in OP(FC) No.4076/2013 3 III. Is there any illegality, impropriety or irregularity if this Court exercises its jurisdiction under Article 227 of the Constitution to direct the Family Court to draft a decree in a suit or proceeding wherein the Court failed to do so? Is the remedy of a party to move for a review only? POINT No.16 At the time of hearing, inputs were supplied to us indicating that there is no consistent practice followed by the Family Courts in the State in drafting decrees in suits or proceedings. Therefore, we issued a direction to the Registry of this Court to get a report from all the Family Courts functioning in the State as to whether they are drafting decrees in suits or proceedings enumerated in Section 7(1) Explanation to

the Act in accordance with the provisions of the CPC. This Court also required the Director, Kerala Judicial Academy to furnish the views of the Academy on this matter.

7. Pursuant to the direction, the Registrar (Subordinate Judiciary) submitted a report attaching the views collected from all the Family Courts functioning in the State. Learned Judges of the Family Courts have reported that decrees are being drafted under Order XX CPC in suits or proceedings mentioned above.

8. Sri.A.M.Babu, Director, Kerala Judicial Academy also RP No.507/2014 in OP(FC) No.4076/2013 4 submitted a detailed report. Based on various provisions of the Act and other relevant statutes, it is stated that drafting a decree is imperative while disposing of a suit or proceeding falling within Explanation to Section 7(1) of the Act. We place on record our deep appreciation for the research done by the learned Director.

9. Before proceeding further, we would refer to the relevant provisions in the CPC and the Act. Section 2(2) CPC defines a decree as a formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and it may be either preliminary or final. Section 7 of the Act deals with the jurisdiction of Family Courts. Section 7(1)(a) of the Act says that a Family Court shall have and exercise all the jurisdiction exercisable by any District Court or Subordinate Court in respect of suits and proceedings of the nature referred to in the Explanation. The Section further says that the Family Court shall be deemed to be a District Court or, as the case may be, a Subordinate Court for the purpose of exercising the jurisdiction conferred by the Act. Section 8(c) of the Act declares that where a Family Court has been established for any area, every suit or proceeding of the nature referred to in the Explanation to Sub-section (1) of Section 7 of the Act pending, immediately before the establishment of such Family Court, RP No.507/2014 in OP(FC) No.4076/2013 5 before any District Court or Subordinate Court, as the case may be, shall stand transferred to such Family Court on the date on which it is established. Section 8(a) of the Act declares that on the establishment of a Family Court for any area, no District Court or

Subordinate Civil Court referred to in Sub-section (1) of Section 7 of the Act shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to Section 7(1) of the Act. It is, therefore, amply clear that ouster of jurisdiction of the District Court or Subordinate Courts is evident from Section 8 of the Act. To give effect to the legislative intent revealed from the provisions in Section 8 read with Section 7 of the Act, it can only be interpreted that a Family Court, dealing with matters specified in the Act (of course, of a civil nature), is bound to draft a decree. Any contra view if taken will lead to absurdities. A litigant may be left to despondency for not able to reap the benefits of a long drawn litigation in the absence of an executable decree. Certainly, that shall not be the legislative intent. Hence, we have no hesitation to hold that all the Family Courts are bound to draft decrees, be it in a contested suit or proceeding or one attained finality on a compromise.

10. Learned counsel for the review petitioner contended that by virtue of Section 10(3) of the Act, the Family Courts are empowered to lay down its own procedure and therefore, insistence on meticulous adherence RP No.507/2014 in OP(FC) No.4076/2013 6 to the provisions of the CPC may be against the spirit of the legislation. We are unable to accept this argument for the following reasons. Section 10 of the Act deals with in generality the procedure to be followed in the Family Courts. It is to be remembered that a Family Court, as per the statute, is an entity having both civil and criminal jurisdictions. Disputes pertaining to family falling within Section 7 of the Act, whether it be a civil action or a criminal case, stands exclusively transferred to a Family Court by operation of Section 8 of the Act. Going by the provisions in the Act, it cannot be said that Family Courts are either purely Civil Courts or purely Criminal Courts. Actually, powers of a Civil Court and that of a Criminal Court have been conferred by the statute on the Family Courts. Sub-section (1) of Section 10 of the Act vividly indicates that subject to other provisions in the Act and Rules, the provisions in the CPC and of any other law for the time being in force, shall apply to suits or proceedings other than the proceedings under Chapter IX of the Code of Criminal Procedure (in short, Cr.P.C.) before a Family Court. It is also explicitly stated that a Family Court shall be deemed to be a Civil Court and shall have all the powers of such Court. Sub-section (2) of the said Section makes it clear that the provisions in the Cr.P.C.

shall apply to the proceedings before the Family Court falling under Chapter IX of that Code. These provisions in Section 10 of the Act certainly pertain to matters in which the parties put up RP No.507/2014 in OP(FC) No.4076/2013 7 a contest before the Court. Intent and purport of establishment of Family Courts are relevant for interpreting Sub-section (3) of Section 10 of the Act. Preamble to the Act shows that it is intended for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs. Section 9 of the Act mandates that the Family Court shall make an endeavour to settle the dispute in the first instance. If we keep in mind the object of the Act and the functions of the Courts established thereunder, there will be no difficulty in appreciating Section 10(3) of the Act. The said Sub-section makes it clear that a Family Court need not be detained by the provisions in Sub-section (1) or (2) of Section 10 of the Act in laying down its own procedure with a view to arrive at a settlement in respect of the subject matter of the suit or proceeding or at the truth of the fact alleged by one party and denied by another. This sweeping power is exercisable only when the Family Court makes an endeavour to settle the disputes between the parties in a suit or proceeding. That is, the power given to Family Court is to achieve the avowed object of the Act. Based on this provision, it cannot be contended that the Family Courts are not bound to follow the respective procedural laws, depending on the nature of the jurisdiction exercised, to adjudicate a contested suit or proceeding. Therefore, it cannot be contended that the procedure under CPC and other relevant Rules are RP No.507/2014 in OP(FC) No.4076/2013 8 totally inapplicable in a proceeding before the Family Court. Freedom under Section 10(3) of the Act can only be availed for effectuating a settlement between the parties, which is the sacred object of the Act and it cannot be used in contested proceedings.

11. Another reason to emphasize that a decree is mandatory in a suit or proceeding falling within Explanation to Section 7(1) of the Act is that the Family Courts are empowered to adjudicate not only marital disputes, but also property suits between the parties to a marriage. For example, Section 7(1) Explanation (c) to the Act says that the Family Court shall have jurisdiction over a suit or proceeding with respect to the property of parties to a marriage or either of them. Likewise, Clause (d) to the Explanation shows that the Family Court is competent

to entertain a suit or proceeding for an order of injunction in the circumstances arising out of a marital relationship. It is, therefore, very evident that the Family Court exercises not only jurisdiction over the person of the parties to a marriage, but also to the properties of such parties. Hence, it is clear that unless a proper decree is drafted, it will be very difficult to take out execution proceedings, if not impossible. Therefore, viewing from any angle, we are of the view that the Family Courts constituted under the Act are bound to draft decrees as provided in the CPC. The question whether it should be exclusively under Order XX Rule 6 CPC or could it be done by taking cue RP No.507/2014 in OP(FC) No.4076/2013 9 from Order XXIII Rule 3 CPC in appropriate cases is very much relevant and it will be discussed in the following paragraphs. To conclude this point, we may reiterate that the Family Courts are bound to draft decrees in suits or proceedings falling within Section 7(1) Explanation to the Act. POINT No.II12 Learned counsel for the review petitioner vehemently contended that the direction issued by this Court to the Family Court concerned to draft a decree in terms of Ext.P2 compromise carries an error apparent on its face. According to him, if at all the Family Court is expected to draft a decree, it can only be in terms of the judgment. In this context, we shall briefly state the relevant facts placed before us. A contentious petition for divorce filed before the Family Court was settled between the parties. Admittedly, the parties executed a compromise. Ext.P2 in the original proceedings is the compromise petition under Order XXIII Rule 3 CPC duly executed by the parties and signed by their counsel. On a reading of Ext.P2, it can be seen that some of the terms are extremely vague. However, the parties have no quarrel about its execution. It was duly filed before the Family Court. Ext.P2 in the original proceedings takes in the judgment passed by the Family Court as well. It is unjustifiably terse. In fact, it ignores all the terms in the compromise petition signed by the RP No.507/2014 in OP(FC) No.4076/2013 10 parties. None of the terms in the compromise was reproduced in the judgment. We shall quote the judgment as it is: "Parties present and filed compromise agreeing to file joint petition for divorce as settlement of monetary liabilities. Compromise recorded and the petition is dismissed with liberty of the parties to seek for joint divorce as settlement of monetary liabilities. No costs." (sic) 13. Contention of the learned counsel for the review petitioner that the Judge had applied his mind while passing the above

judgment is too hard to accept, as it does not reflect any of the terms of compromise. The trial court dismissed the original petition with a liberty to the parties to seek divorce by mutual consent. It is true that the court could not have granted a decree for divorce in terms of a compromise under Order XXIII Rule 3 CPC. But then, the question looms large is whether the Court after recording the compromise could have abstained from passing a judgment and decree in terms of the compromise? 14. Learned counsel for the review petitioner placed reliance on a decision of the Supreme Court in Jayalakshmi Coelho v. Oswald Joseph Coelho (AIR 2001 SC1084. That was a case wherein a petition for divorce by mutual consent was filed under the provisions of the Special Marriage Act, 1954. The prayer made in the petition is extracted in the RP No.507/2014 in OP(FC) No.4076/2013 11 judgment of the Apex Court, which would show that dissolution of marriage between the petitioners solemnised on 06.01.1977 at Bombay alone was sought. In a compromise filed between the parties, some dispositions relating to a flat, custody of a child, etc. had been narrated. But, the decree passed by the Family Court did not touch upon such matters. Therefore, an application was filed under Section 152 CPC for rectification of the mistakes in the decree. That prayer was disallowed throughout and the Apex Court clearly held that Section 152 CPC can be invoked only for rectification of any error occurred in the decree on account of arithmetical or clerical error or an accidental slip. It was found, in the facts and circumstances of the case, that the petitioner could not have sought for amendment of the decree as non-incorporation of the terms and conditions of settlement between the parties was not a clerical or arithmetical error or accidental slip. But in that case, the compromise was not recorded by the Court. That decision has no application either on facts or on law. In this case, the Family Court had found that the compromise was lawful and the same was recorded. Still, it failed to draft a decree. Hence the respondent in the review petition approached this Court to direct the Family Court to draft a decree. We have already held in the previous parts of this judgment that the Family Court was legally bound to draft a decree. Hence that breach of duty, which caused failure of justice, is sought to be set right RP No.507/2014 in OP(FC) No.4076/2013 12 by a petition under Article 227 of the Constitution. It is true that he only sought for a direction to draft a decree in terms of the judgment. It is, therefore, the contention of the review

petitioner that this Court should not have directed the Family Court to draft a decree in terms of the compromise. Was it legally proper for this Court to direct the Family Court to draft a decree in terms of the judgment reproduced above? Was it the duty of this Court to direct the Family Court to pass a decree in terms of the compromise? Answers to these questions are of paramount importance for deciding this case. We have no hesitation to hold that the judgment of the lower court is not in conformity with the terms of the compromise arrived at between the parties. We do not wish to pronounce on the legality and/or executability of a compromise decree which ought to have been passed. Those aspects can be decided in appropriate proceedings. But, having found that the compromise was lawful, could the Family Court have passed a judgment at variance with the terms of the compromise? 15. Order XX CPC deals with judgment and decree. Order XX Rule 6 CPC prescribes the contents of decree. It opens with a sentence that "the decree shall agree with the judgment". Further it proceeds to describe the essentials to be shown in the decree. Order XX Rule 6A CPC, inter alia, sets the time limit for preparation of a decree. Order XX Rule 6B CPC states that copies of the judgment shall be made available to the RP No.507/2014 in OP(FC) No.4076/2013 13 parties immediately after pronouncement of judgment for preferring an appeal on payment of charges fixed by the relevant statute. It is to be noticed that these provisions in Order XX CPC are general provisions applicable to decrees passed in any suit, either contested or settled. It is pertinent to note that earlier provisions in Order XX Rules 6A and 6B, added to CPC by Amendment Act 104 of 1976, were substituted by Act 46 of 1999 (w.e.f. 01.07.2002). If we revisit the earlier provision in Order XX Rule 6A, as it stood before the latest amendment, it can be seen that Sub- rule (1) therein insisted that the last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment. Order XX Rule 6B CPC even after the last amendment gives us enough indications to hold that it will be expedient to state the reliefs granted in clear terms in the operative portion of the judgment so that the aggrieved party can file an appeal as provided in the said provision even before the drafting of a decree. Ideally the operative portion of a judgment pronounced by a Civil Court should state in clear terms the reliefs granted so that the officer enjoined with the duty of drafting the decree need only cut the operative portion of the judgment and paste it

in the decree. This will certainly avoid the risk of drafting an inaccurate decree by a person not proficient in law. The rights of the parties at no cost shall be left to the whims or fancies or imagination of a decree clerk. RP No.507/2014 in OP(FC) No.4076/2013 14 16. A reading of Section 152 and Order XX Rules 3, 6 and 7 CPC will indicate that insistence is not on judgments being in accordance with decrees, but vice versa. Obvious reason is that the judgment comes first, followed by a decree. Now, the question is whether there is anything special about a compromise decree.

17. Admittedly in this case, there was a compromise between the parties before the Family Court and in tune therewith, Ext.P2 judgment should have been passed. Order XXIII Rule 3 CPC, which is relevant for our purpose, reads as follows: "3. Compromise of suit.-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise a in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject- matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. Provided that where it is alleged by one party and denied by the other that an adjustment or RP No.507/2014 in OP(FC) No.4076/2013 15 satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment. Explanation.-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule." (underline supplied) 18. In order to compromise a suit pending before any Civil Court and to get a decree in terms of the compromise, the following conditions must be fulfilled: (i) It must be proved to the satisfaction of the court that the suit has been adjusted wholly or in part by any lawful agreement or compromise. (ii) The agreement or compromise should be in writing and signed by the parties. Well settled is the principle that the expression "parties" occurring in the provision should be considered as all the parties to the suit. (iii) If the court finds that the agreement or compromise is lawful, it shall order

such agreement or compromise or satisfaction to be recorded. RP No.507/2014 in OP(FC) No.4076/2013 16 (iv) The court shall pass a decree in accordance with the agreement or compromise, so far as it relates to the parties to the suit. (v) Once the court finds that the agreement or compromise is lawful, it shall record the same and pass a decree in terms therewith, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit or beyond that. Play of proviso therein does not arise in this case. Hence, we omit a discussion thereon. The expression "suit" in Order XXIII Rule 3 CPC will have to be read as "suit or proceeding" in the context of a Family Court. Order XXIII Rule 3 CPC unequivocally states that the decree shall be in accordance with the compromise or agreement. The only inquiry contemplated by the Court when the parties compromise a matter is regarding the lawfulness of the compromise or agreement. If that is found to be in the affirmative, the Court has no option, but to record the same and pass a decree in tune with the compromise or agreement. Nothing in Order XXIII Rule 3 CPC prohibits a Court from preparing a judgment in terms of the compromise or agreement. If for any reason, the Court could not pronounce a judgment incorporating all the terms and conditions in the compromise or agreement, it is incumbent on the Court to make the compromise or agreement itself a part of the decree. In this case, the Judge concerned failed to do so. Dismissal of the suit or proceeding in its RP No.507/2014 in OP(FC) No.4076/2013 17 entirety by the Family Court, as seen from the judgment extracted above, was nothing but an illegality. It is to be remembered that in the absence of any challenge against the legality of the terms of compromise, none of the parties could have filed an appeal against the decree, which should have been passed in the proceedings, because of the interdict in Section 96(3) CPC. Therefore, care should have been taken by the trial Judge to record the compromise and pass a decree in terms of the compromise. The Court should not have ignored the terms and conditions arrived at by the parties. Basis of any compromise decree is a lawful contract or adjustment of rights and obligations between the parties, which the Courts are bound to respect. And if they are found to be lawful, the Courts are bound to record the same and pass a decree in accordance therewith. It will be the highest impropriety on the part of a Court to substitute the terms of the agreement or compromise by its own reasons and pass

a decree against the terms arrived at by the parties.

19. The Family Court, after recording the compromise, should have passed a judgment incorporating all the terms of the compromise without doing any violence to the intent and purport of the compromise or to the intention of parties for arriving at a settlement while reproducing the same in the judgment or it should have passed a judgment in terms of the compromise by incorporating the same as part of the decree. In that event, RP No.507/2014 in OP(FC) No.4076/2013 18 there will be no conflict between the provisions in Order XX Rule 6 and Order XXIII Rule 3 CPC. We are sure for the above reasons that the Family Court in this case could only have passed a decree in terms of the compromise and not in terms of the perfunctory judgment quoted above.

20. In support of the above view, learned counsel for the contesting respondent relied on a decision of the Supreme Court in Amteshwar Anand v. Virender Mohan Singh ((2006) 1 SCC148. We shall extract the relevant passages from paragraphs 25 to 27 of the said decision for clarity.

"5. Order 23 Rule 3 casts an obligation on the court to be satisfied that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties. On the material before it, the High Court would have had no reason to hold that the suits had not been adjusted as affirmed by the parties to the application. It was not necessary for the Court to say in express terms that it was satisfied that the compromise was a lawful one. There is a presumption that the Court was so satisfied unless the contrary is proved (see Suleman Noormohamed v. Umarbhai Janubhai ((1978) 2 SCC179AIR 1978 SC952.....

26. The second obligation cast on court by RP No.507/2014 in OP(FC) No.4076/2013 19 Order 23 Rule 3 is to order the agreement to be recorded. This is normally done simultaneously with the passing of the decree.....

27. Finally the court is required to pass decree in accordance with the agreement or compromise." Therefore, the contention of the review petitioner that the decree to be drafted by the Family Court in this case shall be in terms of the

judgment cannot be accepted. The Family Court should prepare a decree in terms of the compromise as the judgment is devoid of any of the terms in the compromise. POINT No.III21 The first respondent in the original proceedings approached this Court with a review petition contending that there is an error apparent on the face of the judgment and this Court should not have invoked the jurisdiction under Article 227 of the Constitution. The remedy available to the original petitioner, even if one exists, is to seek a review of the judgment. It is clear from Section 114 and Order XLVII Rule 1 CPC that there should be certain conditions satisfied for invoking the power of review of a judgment. The grievance raised by the original petitioner is that the Court did not draft a decree in spite of recording the compromise. He did not seek any review of the judgment, but only pointed out an inexcusable RP No.507/2014 in OP(FC) No.4076/2013 20 omission on the part of the Family Court. He never wanted to tinker with the judgment passed by the Family Court. He did not raise any complaint that there is an error apparent on the face of the judgment. But, his complaint was that the Family Court failed to exercise its jurisdiction in a legally proper manner. The Supreme Court in *Surya Dev Rai v. Ram Chander Rai* (AIR 2003 SC3044) clearly held that the parameters for exercise of jurisdiction under Article 226 or 227 of the Constitution cannot be tied down in a straight jacket formula or rigid rules. It is well settled that a proceeding under Article 227 of the Constitution is neither a statutory remedy nor a continuation of the original proceedings. It is an extraordinary discretionary constitutional remedy. Indisputable is the legal position that the High Court gets jurisdiction to interfere under Article 227 of the Constitution where the inferior Court or Tribunal has passed a clearly illegal order or done a clearly illegal act. Power under Article 227 of the Constitution involves a duty on the High Court to keep the inferior Courts and Tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner (see- *Banerjee v. P.R.Mukharjee* (AIR 1953 SC58). In *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale* (AIR 1960 SC137) it has been held that the High Court can interfere under Article 227 if it finds an RP No.507/2014 in OP(FC) No.4076/2013 21 error of law apparent on the face of the record. Here, we notice a legal error writ large in the proceedings before the lower court. A patent or flagrant error in procedure is also a matter inviting the invocation of jurisdiction

under Article 227 of the Constitution (see - Trimbak Gangadhar Telang v. Ramchandra Ganesh Bhide (AIR 1977 SC1222)). Therefore, we are clear in our mind that the exercise of jurisdiction under Article 227 of the Constitution was proper and warranted in this case because of the patent illegality committed by the Family Court in spite of compromising a matter pending before it. In the absence of any grievance raised by the original petitioner against the correctness of the judgment, the question of review does not arise. More over, the original petitioner could not have raised any complaint against an unborn decree, for it was omitted to be drafted by the Family Court. Therefore, we are not impressed about the challenge raised by the review petitioner that the proceedings under Article 227 of the Constitution was incompetent.

22. It is brought to our notice that subsequent to the direction passed by this Court, a decree has been drawn up by the Family Court in tune with the judgment. The aforementioned reasons prompt us to deprecate such a decree, if any passed in this case. If advised, the parties can take steps before the lower court for rectification of mistakes. RP No.507/2014 in OP(FC) No.4076/2013 22 In the result, the review petition is dismissed. The Family Court concerned shall scrupulously comply with the directions of this Court in the earlier judgment. Considering the importance of the issue involved, we direct the Registry to take appropriate steps to circulate this order to all the Family Courts in the State for guidance and compliance. V.K.MOHANAN, JUDGE. A. HARIPRASAD, JUDGE.
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