

Suprabha Vs. Sivaraman

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Court : Kerala

Decided On : Jan-25-2006

Reported in : AIR2006Ker187; II(2006)DMC404; 2006(1)KLT712

Judge : R. Bhaskaran and; M. Sasidharan Nambiar, JJ.

Acts : [Family Courts Act, 1984](#) - Sections 7 and 7(1); Muslim Women (Protection of Rights on Divorce) Act, 1986 - Sections 3, 3(2); Family Courts (Kerala) Rules, 1989 - Rule 3 and 7; Code of Civil Procedure (CPC) - Sections 26 - Order 7 Rule 1; [Code of Criminal Procedure \(CrPC\) , 1973](#)

Appeal No. : F.A.O. No. 6 of 2006

Appellant : Suprabha

Respondent : Sivaraman

Advocate for Def. : V. Philip Mathew, Adv.

Advocate for Pet/Ap. : V. Giri and; S. Santosh Kumar, Adv.

Disposition : Appeal allowed

Judgement :

R. Bhaskaran, J.

1. This appeal is filed by the petitioner before the Family Court, Thiruvalla. The petition was filed by Suprabha through her next friend for realisation of Rs.9,55,160/-being the value of the gold ornaments, cash paid and other movables given at the time of marriage of Suprabha with Santhosh. The respondents before the Family Court are the parents of Santhosh as Santhosh committed suicide subsequent to the marriage. There is also a child born in the wedlock. The case of the appellant is that Suprahha was mentally and physically tortured in the house of the respondents and she became a mental patient. The ornaments belonging to her and the child were taken by the respondents and not returned to her. The Family Court returned the petition stating that one of the parties to the marriage is no more and hence the petition is not maintainable before the Family Court,

2. In this appeal, the appellant challenges the finding of the Family Court that the petition is not maintainable before the Family Court. The petition is filed under Rule 3 of the Family Courts (Kerala) Rules, 1989, and Section 26 and Order VII Rule 1 of the Code of Civil Procedure.

3. The question for consideration in this appeal is whether the subject-matter of the dispute between the parties to the litigation comes under Section 7 of the [Family Courts Act, 1984](#), which enumerates the cases coming under the jurisdiction of the Family Court Section 7 of the Act reads:

7. Jurisdiction-- (1) Subject to the other provisions of this Act, a Family Court shall,--

(a) have and exercise all the jurisdiction exercised 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 proceedings of the following nature namely,

(a) suit or proceeding between the parties for a decree of nullity or 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 proceeding for maintenance;

(g) a suit or proceeding to the guardianship of the person or the custody of, or access to, any minor. (2) Subject to the other provisions of this Act, a Family Court shall also have and exercise,--

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

According to the learned Counsel for the appellant, the case can come either under Clause (c) or Clause (d) of Explanation to Section 7 of the Act. To attract Clause (c), it should be a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them. To come under Clause (d), it should be a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. It may be because the petitioner's counsel was

not sure about the provision under which the O.P. was filed that the relevant clause in Section 7 is not quoted in the O.P.

4. First we will consider whether Clause (c) of Explanation to Section 7 of the Act is attracted or not. Whether a suit or proceeding between the parties to a marriage will include a suit or proceeding between the parties to a marriage which is not subsisting was considered by the Supreme Court in *Abdul Jaleel v. Shahida* 2003 (2) KLT 403 (SC). While construing this provision, the Supreme Court found that that clause is applicable even in cases where the marriage between the parties was not subsisting. In that case, the Supreme Court observed that from a perusal of the Statement of Objects and Reasons, it appeared that the said Act inter alia extends the jurisdiction of the Family Court to properties of spouses or of either of them. The contention was that a suit or proceeding between the parties to a marriage can mean only a suit or proceeding between the parties to a subsisting marriage. That contention was rejected stating that the jurisdiction was created specially for resolution of disputes of certain kinds and the provision should be construed liberally. Otherwise, it would frustrate the object of the Act. But at the same time the Supreme Court approved the decision of the Allahabad High Court in *Amjum Hassan Siddiqui v. Salma* : AIR1992 All322 . In that case, the application was filed under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. It was contended that the parties were married on 4-10-1983 and the appellant divorced the respondent on 25-2-1991. But she had neither been paid the dower money nor the articles given to her on the occasion of her marriage returned to her. The Allahabad High Court held that since an application under Section 3(2) of the Muslim Women (Protection of Rights on Divorce) Act, 1986, can be moved before the First Class Magistrate, proceeding under Section 7 of the Act will not lie before the Family Court unless jurisdiction is specifically conferred on it.

5. When either the husband or the wife is not alive and the suit is filed against the parents of either of them, it cannot be said that it is a suit or proceeding between the parties to a marriage. The learned Counsel for the appellant relied on the meaning of the word 'parties' in Rarnanatha Iyer's Law Lexicon as 'the person who take part in the performance of any act, or who are directly interested in any affair,

contract or conveyance or who are actively concerned in the prosecution and defence of any legal proceeding.' The learned Counsel for the respondents on the other hand relied on the meaning of the word 'parties' in Black's Law Dictionary, which reads: 'The person who take part in the performance of any act, or who are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding'. We are of opinion that in the context of Section 7(c) the meaning of the words 'parties to a marriage' cannot be given such a wide interpretation as to include all those who are interested in the welfare of the couple or those who take part to the marriage ceremony. Therefore, the suit or proceeding must be between the husband and the wife with respect to the property of the parties or either of them. Thus we are of opinion that Section 7(c) of the Act is not applicable in such cases and the Family Court was justified in holding so.

6. The next point to be considered is whether Section 7(d) of the Act is attracted or not. In Section 7(d), the words 'between the parties to a marriage' are conspicuously absent. But it applies to a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship. What is the meaning of the words 'in circumstances arising out of a marital relationship'? Another Division Bench of this Court had occasion to consider the scope of Section 7(d) of the Act recently. In *Leby Isaac v. Leena M. Ninan* : AIR2005 Ker285 , Justice Hema, speaking for the Bench, analysed Section 7(d) of the Act with the help of the Family Courts (Kerala) Rules, 1989. It was found that all the proceedings initiated before the Family Court have to be treated as petitions and the relief granted will be orders. Therefore, the first part of Section 7(d) will be satisfied even though the section does not mention anything about a decree for recovery of money as coming under the provisions of Section 7(d) of the Act. The meaning of the word 'circumstances' as found in Law Lexicon and Black's Law Dictionary was referred to and it was found that it will include those particulars which closely precedes, surrounds, accompanies or follows a marital relationship. It was found that the main requirement was that such circumstances must have a direct bearing on marriage. It was also found that 'circumstances arising out of marital relationship' means not only those occurrences which transpired during marital life, but also include such circumstances which led to the marriage, which

developed thereafter, and those such followed as a consequence. It was also found that if the intention of the legislature was to take in only those occurrences which took place during a marital relationship, there was no necessity to use the word 'circumstances'. The inclusion of the word 'circumstances' in the provision was found to be quite significant which was done to include all such circumstances surrounding, preceding and closely following a marital relationship. That was a suit for recovery of damages by the husband against the wife and father-in-law. The claim was that the husband had spent Rs. 2,50,000/- for conducting the marriage but the wife refused to cohabit, with the husband and she had illicit relationship with the 3rd respondent. All these resulted in pain and suffering to the appellant and he claimed Rs. 10,00,000/- as compensation. The Family Court held that it had no jurisdiction since the cause of action in the suit was the alleged misrepresentation on the part of the respondent and the suit cannot be treated as a suit arising in the circumstances out of a marital relationship. The Division Bench of this Court set aside that finding and held that the O.P. was maintainable before the Family Court.

7. In this case, as already noticed, the suit is for return of value of the gold ornaments, cash paid and other valuables given at the time of marriage of Suprabha with Santhosh. Since Santhosh is not alive, we have already found that Section 7(c) is not attracted as the suit or proceeding is not between the parties to the marriage. But if the suit or proceeding arises out of marital relationship, the jurisdiction of the Family Court is not ousted. The Supreme Court in Abdul Jaleel's case (2003 (2) KLT 403 (SC), held that the words 'disputes relating to marriage and family affairs and for matters connected therewith' must be given, a broad construction and the statement of objects and reasons would go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise. It was probably because what was provided under Section 7, Explanation (c), was not sufficient to bring all disputes arising out of marital relationship and there may be cases where either the husband or wife was not alive at the time of filing the suit that the legislature thought of adding Clause (d). As per the practice, at the time of

marriage, gold ornaments are given to the bride by her parents. Whether those ornaments were taken by the parents of the husband or not and whether there was payment of cash and other movables etc., are matters to be proved in evidence at the time of trial of the case. But the claim for return of the value of these items can be said to be a claim in the circumstances arising out of marital relationship. If a restricted interpretation is to be given to these words, it may relate only to legitimacy of a person, maintenance or guardianship for which separate clauses are inserted in Section 7(l)(e) to (g) and therefore the legislature must have in contemplation other cases not covered by Clauses (e) to (g) and we are inclined to give a liberal interpretation to Explanation (d) in Section 7(l). It is true that as held by Justice Pareed Pillay, as His Lordship then was, in *Kamalasanan v. Valsala* 1994 (1) KLT 737, all matters not covered by Section 7 of the Act would come within the civil court's jurisdiction. In that case, the suit was for a declaration that the revision petitioner was bound to conduct the marriage of his daughter and also for a mandatory injunction to provide her necessary funds. It was found that the same would not come under any of the provisions contained in Rule 7 of the Act. In this case, the claim is based in connection with the amounts and ornaments alleged to have been given at the time of marriage and is clearly associated with the marital relationship. The object of the Family Courts Act was to establish 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 Law Commission in its 59th report stressed the need for adopting an approach different from that adopted from ordinary civil proceedings and reasonable efforts and settlement before the commencement of the trial should be made. In the setting in which Clause (d) of Explanation to Section 7 of the Family Courts Act is placed, we are of opinion that a petition for return of the gold ornaments and other cash paid at the time of marriage will also come within the jurisdiction of the Family Courts though one of the spouses is not alive at the time the case was filed. We are of opinion that the Family Court was not correct in returning the plaint for presentation before proper court and we direct the Family Court, Thiruvalla, to take back the plaint and proceed with the trial in accordance with law. The order under challenge is set aside and the appeal is allowed without any order as to costs. The Registry will return the original of the petition filed

before the Family Court to the counsel for the appellant to enable the appellant to represent the same before the Family Court.

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