

Syamaladevi Vs. Sarala Devi and ors.

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Court : Kerala

Decided On : Feb-02-2009

Reported in : AIR2009Ker138; 2009(1)KLJ646

Judge : P.R. Raman and; C.T. Ravikumar, JJ.

Acts : Family Court Act - Sections 7 and 7(1); Hindu Marriage Act - Sections 19 and 19(1); Succession Act; Hindu Minority and Guardian and Wards Act - Sections 3910

Appeal No. : WP(C) No. 11048 of 2008(S)

Appellant : Syamaladevi

Respondent : Sarala Devi and ors.

Advocate for Def. : M.R. Rajesh and; Moolayam S. Ramachandran Nair, Adv.

Advocate for Pet/Ap. : Govind K. Bharathan, Sr. Adv.,; C.P. Kunjhikannan and; S

Disposition : Appeal dismissed

Judgement :

P.R. Raman, J.

1. This writ petition arises out of an order passed by the Family Court deciding the jurisdictional issue as a preliminary issue as directed by this Court in an earlier

proceeding - W.P.(C) 17711/2006. The above said writ petition was filed against an order granting an interim relief of injunction restraining the petitioner herein from receiving the pensionary benefits due to deceased Bhaskara Pillai who is alleged to be the husband of the petitioner. Though question of jurisdiction as such was not raised at that time, such a contention was raised in the writ petition and therefor, this Court directed the Family court to decide the question of jurisdiction as a preliminary issue. It is thereafter that the present order was passed holding that the Family Court has jurisdiction under Section 7 of the Family Court Act and also territorial jurisdiction under Section 7 of the Family court has got territorial jurisdiction to entertain the matter.

2. The essential facts relevant for the purpose of disposal of this writ petition can be stated as follows:

The petitioner herein is a respondent in O.P 2348/2005 instituted by respondents 1 and 2 herein for a declaration that the first respondent is the legally wedded wife and the second respondent is the son of Bhaskara Pillai and to allow the first respondent to receive the family pension in respect of deceased Bhaskara Pillai and for an injunction restraining the authorities from disbursing the family pension to the petitioner herein. The contention on the part of the respondents was that Bhaskara Pillai married Sarala Devi the first respondent on 22-3-1978 and the second respondent Anoop was born out of that wedlock. Bhaskara Pillai retired from service as a Lower Primary School Head Master in 2003 and he died on 5-9-2005. Petitioner here in claimed to be the legally wedded wife of Bhaskara Pillai and according to her, their marriage was solemnized on 25-4-1983, after dissolving the marriage between the first respondent here in and Bhaskara Pillai. Therefore, according to the petitioner herein, there was a marriage between Bhaskara Pillai and the first respondent herein which has been dissolved prior to her marriage with him. Since after the retirement of Bhaskara Pillai, petitioner was receiving the family pension as a nominee, necessarily the first respondent had to seek a declaration regarding her marital status with that of Bhaskara Pillai before proceeding to seek other incidental reliefs like pension etc. Since a declaration was sought for by the first respondent and her son to the effect that the first respondent is the legally wedded wife of Bhaskara Pillai and the second

respondent is born in that wedlock, it was contended that the Forum where the matter could be agitated is the Family Court which has got territorial jurisdiction. By order dated 16-2-2008 in I.A. 1821/2007, the Family Court held that the dispute relating to the marital status of the first respondent herein with late Bhaskara Pillai vis-a-vis arises for consideration and it is in the nature of a dispute specifically referred to under Section 7(1)(b) of the Family Court Act and as such the dispute has to be decided by the Family Court. The court went on to consider the question of territorial jurisdiction with reference to Section 19 of the Hindu Marriage Act, and held that under Section 19(1)(iii)(a) of the Hindu Marriage Act, the Family Court, Nedumangad has got territorial jurisdiction to entertain the case. As regards this finding, no dispute is raised by the petitioner and no serious arguments were raised by the learned Counsel for the petitioner herein. In the absence of any dispute regarding the residence of the petitioner in the original petition and considering the relief sought for, it cannot be said that the finding entered into by the Family Court is in any way illegal or wrong and as such the said finding is confirmed.

3. The main question thus remains to be resolved in this proceeding is as to whether the Family Court has got jurisdiction having due regard to the nature of the dispute between the parties and the relief claimed in the petition.

4. Both sides placing reliance on the decisions of this Court as well as other courts, sought to support their respective stands. Before referring to the decision so cited at the Bar, it will be useful to refer the statutory provisions contained in Section 7 to the extent it is relevant for the purpose, as follows: Section 7 of the Family Court Act reads as follows:

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 subsection are suits and proceedings of the following nature, namely,:

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

5. On a plain reading of the provisions, it can be seen that the Family Court has jurisdiction exercisable by any District Court or by a subordinate civil court under any law for the time being in force in respect of suits and other proceedings of the nature referred to in Explanation (a) to (g). It can be seen that some of the proceedings are in the nature of dispute between the spouse and some Of them are in the nature of disputes relating to the property of either of them both, as the case may be. Clause (a) under the Explanation refers to the nature of the 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. Therefore, this is a proceedings between the spouses. Clause (b) is in

the nature of a proceeding relating to declaration as to the nullity of marriage or the matrimonial status of a person. However, unlike Clause (a) it does not say that such suit or proceeding should be between the parties to the marriage. In other words, Clause (b) is widely couched to include the proceedings of the nature referred to regarding declaration of the validity of the marriage or it could be for a declaration of the matrimonial status of any person. Therefore, if a person claims himself to be the wife or the husband of another, a declaration could be sought for that she is the legally wedded wife or he is the legally wedded husband of the other. It need not necessarily be between the parties and even after the death of either of them, such question may arise and if any dispute and if any necessity of giving such declaration arises, it is possible to comprehend such disputes as falling under Section Clause (b) of Section 7 of the Act.

6. Then again, Clause (c) refers to a suit or other proceeding between the parties to marriage with respect to their properties or of either of them whereas Clause (d) refers to a suit or proceeding for an order of injunction in the circumstances arising out of the marital relationship. Therefore, to attract Clause (c) the dispute must be between the parties to the marriage whereas Clause (d) will be attracted if the dispute arises out of marital relationship and need not necessarily be between the spouses. Likewise, Clause (e) refers to a suit or proceedings for a declaration as to the legitimacy of any person. There again, it may be possible for a child born in the wedlock between A and B to claim that he/she is the legitimate child born in the wedlock between the two persons. Clause (f) refers to suit or proceeding for maintenance and Clause (g) refers to suit or proceeding related to guardianship of the person or custody of or any access to any minor. It may be incidentally pointed out that proceeding under Clause (g) could certainly take in even a proceeding not necessarily between the spouses. If in a particular case, after the death of one of the spouse a dispute arose as to the guardianship and if the child is in the custody of the grand parents of either of them, the question may arise as to who is to be the person to be the custodian of the children which jurisdiction will have to be exercised having due regard to the welfare of the child. There again, as we have pointed out, it need not be necessarily between the parties to the marriage; but it may be between even third parties who may have a better claim for custody of the minor children having due regard to the relationship they have with the child and

for other good reasons relevant for consideration.

7. In the is case, since the relief sought for is for a declaration as to the status of the first petitioner as the legally wedded wife and the second petitioner as the child born in the wedlock between the first petitioner and the deceased Bhaskara Pillai, there may not be any doubt that it will squarely fall under Section 7(b) of the Family Court Act.

8. Learned Counsel appearing for the petitioner referred to a Bench decision of the Andhra Pradesh High Court in Srihari v. Sukunda 2001 (1) KLT 101. There, a dispute between the family members concerning property arose for resolution before the Family Court. One of the spouses was not a party to the litigation. It was held that it can never be considered as a cause falling within the realm of the Family Court. On facts, it was found that the case was one concerning a dispute between the relatives of the spouses. The factual details regarding the dispute and the manner in which such dispute arose, however, are not available in the said decision for perusal. In Suprabha v. Sivaraman : AIR2006 Ker187 a Division Bench of this Court held that 'when either of 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 and therefore may not fall under Clause 7(c) of the Act. But the claim for return of the gold ornaments and other cash paid at the time of marriage was held to be within the jurisdiction of the Family Court, though one of the spouses was not alive at the time when the case was filed. Thus, even if one of the spouse is not alive, if the nature of the dispute falls under Section 7(d) it will still fall within the jurisdiction of the Family Court. This is a direct answer to the decision of the Division Bench of the Andhra Pradesh High Court, taking a contrary view.

9. In yet another decision of this Court reported in Devaki Antharjanam v. Narayanan Namboodiri : AIR2007 Ker38 a learned Judge of this Court held that co-ownership property of husband, wife and son cannot be said to be the property of 'the parties to a marriage or either of them. The words 'either of them' following the expression 'with respect to the property of the parties' would unmistakably lead to the conclusion that the expression refers to parties to a marriage and not parties

to the proceedings. In order to attract Clause (c), the litigation must be with respect to the property of either the husband or wife or both of them. It excludes any other person who has independent rights in respect of the property. Accordingly, the civil court was held to have jurisdiction over the matter.

10. In *Vasumati v. Chandriyani Madhavi* AIR 1991 Kar 201 a learned Judge of that Court had occasion to hold that a petition under Succession act will lie only before the civil court and not before the Family Court. In *Abdula Jaleel v. Sahida* 1997 (1) KLT 734, His Lordship Justice K.G. Balakrishnan (as he then was) speaking for the court has held that Section 7 of the Family Court Act gives the various types of proceedings over which the Family Court has jurisdiction to try and refused to accept the contention of the appellant therein that the parties to a marriage referred to therein shall only confine to the parties to the subsisting marriage. The object of the Family Court Act is to settle the family disputes and the disputes relating to family may be there even after the dissolution of the marriage. True, in that case, the dispute was between the parties after dissolution of the marriage. It was also held that an order deciding the maintainability of the petition before the Family Court is appealable under Section 19(i) of the Act. The decision was approved by the Apex Court in *Abdul Jaleel v. Shahida* 2003 (2) KLT 403 (SC).

11. As we have already pointed out, the plain language of the various clauses contained in Explanation (a) to (g) cannot be restricted to the dispute confining to the parties to the marriage either during the subsistence of the marriage or thereafter. Some of the disputes may even arise after either of them dies. That is very clear from the language of the expression used in Clause (b) of Explanation 7. While Clause (a) and various other clauses which we have already referred to would show that the nature of the dispute dealt with may be between the spouses, it cannot be said that the disputes referred to under Clauses (c), (d) and (g) will be confined to the parties to the marriage. In other words, a suit or proceeding for an injunction may arise out of a marital relationship but need not necessarily be between the spouses.

12. This Court in *Leby Issac v. Leena M. Ninan* : AIR2005 Ker285 held that the expression 'in circumstances arising out of a material relationship' means not only

those occurrence which transpired during the marital life, but those also include such circumstances which led to the marriage, which developed thereafter, which took place during marital life, which resulted in breaking down of marriage and also those which 'closely' followed as a consequence of all these. If the intention of the legislature was to take in only those occurrences which take place during a 'marital relationship', the usage of the word 'circumstances' in Explanation (d) to Section 7(1) of the Act would have become unnecessary. Therefore, the inclusion of the word 'circumstances', if given its true meaning, then it cannot be confined to one arising during the marital relationship and may extend even beyond that. Therefore, whether in a particular case where the nature of the dispute raised and the reliefs claimed are in the nature of the proceeding falling within any of the explanation of Clauses (a) to (g) of Section 7 will have to be decided having due regard to the peculiar facts and circumstances and the nature of the dispute that is raised in the case. It may not be possible to give an exhaustive list of the cases that may fall under one or the other. But it cannot be said that such dispute should necessarily be during the subsistence of the marital relationship between the parties or should be during their life time. At the same time, it cannot also be stated that all dispute raised by one of the spouse will fall under any of the dispute referred to in the explanation. For example, a wife, after the death of the husband, may seek for dissolution of the firm in which her husband was a partner or she may institute a proceeding for distribution of the assets of the firm, settlement of accounts etc. which the husband himself, during his lifetime, could seek for. But after his death the wife is only stepping into the shoes of the husband. Such disputes cannot be said to arise out of any matrimonial relationship or anything connected with the marriage. It is purely a civil dispute which one could agitate and seek relief from an ordinary civil court. On the other hand, a dispute may be raised by the wife against the husband claiming that a particular property belongs to her and not to him or that she had contributed to the acquisition of the property though it stands in the name of the husband. The husband, during the pendency of the proceeding, if dies, the proceeding does not become abated or cease to be triable by the Family Court. It will be continued by the heirs of the husband claiming themselves to step into the shoes of the husband or by those interested to prosecute the matter. Therefore, one will have to examine the factual situation to

say whether the dispute or claim falls under one or other category which are mentioned in Clause(a) to (g) of Section 7. In this case, the first respondent seeks for a declaration that she is the wife of Bhaskara Pillai and the second respondent claims to be the child born out of that wedlock. Therefore, the relief claimed by them squarely falls within Clause (d) to Section 7 even though the disputes have arisen after the death of Bhaskara Pillai.

13. In the decision reported in Kamalasanan v. Valsala 1994 (1) KLT 737 a learned Judge of this Court held that a suit for injunction against father for conducting the marriage of the daughter is not maintainable before the Family Court. However, we find that if the suit was one for maintenance by a daughter and as per the definition of Section 3910 under the Hindu Minority and Guardian & Wards Act, the right to maintenance includes reasonable marriage expenditure for the daughter, whether such proceeding will certainly fall under the jurisdiction of the Family Court was not brought to the notice of the Court and no considered.

14. In the circumstances, we hold that the finding of the Family Court that it has got jurisdiction in the matter can in no way be faulted.

15. In the result, the appeal fails and is accordingly dismissed.