

Madhavan Vs. Chellamma

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SooperKanoon Citation : sooperkanoon.com/731108

Court : Kerala

Decided On : Nov-11-2003

Reported in : I(2004)DMC764; 2004(1)KLT908

Judge : J.B. Koshy and; K. Thankappan, JJ.

Acts : Kerala Family Court Act, 1984 - Sections 7, 19, 19(1) and 19(5); Code of Civil Procedure (CPC) - Order 43, Rule 1

Appeal No. : Mat. App. No. (Unnumbered of 2003)

Appellant : Madhavan

Respondent : Chellamma

Advocate for Pet/Ap. : Sathish Ninan, Adv.

Judgement :

ORDER

J.B. Koshy, J.

1. The question to be decided is regarding the maintainability of appeal filed under Section 19 of the Family Courts Act against an order of the Family Court, returning the O.P. filed before it as not maintainable for presentation before the proper court. An application was filed before the Family Court by the Appellant. The Family Court found that the application will not lie before it and therefore it is not

maintainable and therefore the Original Petition was returned for presentation before the proper court. Challenging the above order this appeal has been filed. The Registry objected the same saying that such appeal can be filed only under Order XLIII, Rule 1(a) of CPC. Sections 19(1) and 19(5) of the Family Courts Act, 1984 reads as follows:

'19. Appeal.- (1) Save as provided in Sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every Judgment, Order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

** ** *(5) Except as aforesaid, no appeal or revision shall lie to any court from any Judgment, Order or Decree of a Family Court'.

2. A finding of a Family Court on a preliminary issue that it has got jurisdiction or no jurisdiction to entertain the petition will certainly affect the rights of the parties and it was held in Abdul Jaleel v. Sahida, 1997 (1) KLT 734, that such orders are appealable. The appeal filed from an order of the Family Court will lie only before this Court under Section 19. Section 19(5) specifically prohibits filing of appeal against any order of Family Court in any other forum. The question to be decided is whether impugned order of the Family Court in rejecting the petition as not maintainable is correct and the reliefs claimed in the O.P. will come within the scope of Section 7 of the Family Courts Act. It has to be decided not in an appeal filed under Order XLIII, Rule 1(a) of CPC but in an appeal filed under Section 19(1) of the Family Courts Act. Therefore the appeal is maintainable. Registry to number the appeal.