

Sivadasan Vs. Santha

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Court : Kerala

Decided On : Jul-06-1999

Reported in : I(2000)DMC198

Judge : P.V. Narayanan Nambiar, J.

Acts : [Hindu Adoptions and Maintenance Act, 1956](#) - Sections 3; [Family Courts Act, 1984](#) - Sections 7

Appeal No. : C.M.C. No. 87 of 1998

Appellant : Sivadasan

Respondent : Santha

Advocate for Def. : P.B. Suresh Kumar, Adv.

Advocate for Pet/Ap. : K. Subash Chandra Bose and; V. Prem Chand, Adv.

Judgement :

P.V. Narayanan Nambiar, J.

1. O.S. No. 66 of 1993 on the file of the Family Court, Trivandrum, renumbered as O.S. No. 32 of 1995 on the file of the Family Court, Kollam, is a suit filed by the wife and daughter of the revision petitioner for enhancement of the amount of maintenance awarded in their favour in an earlier suit. O.S. No. 86 of 1996 on the

file of the Sub-Court, Kottarakkara is a suit filed by the second plaintiff in O.S. No. 32 of 1995 against her father who is the revision-petitioner herein claiming an amount of Rs. 1,25,000/- towards the expenses of her marriage. The prayer in the C.M.C. is to transfer O.S. No. 86 of 1996 pending before the Sub-Court, Kottarakkara to the Family Court, Kollam.

2. Section 7 of the [Family Courts Act, 1984](#) (for short 'the Act') which deals with jurisdiction says that subject to the other provisions of this Act, the Family Court shall 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. Explanation (f) to Section 7 of the Act deals with a suit or proceeding for maintenance.

3. Parties to the litigation are Hindus governed by the [Hindu Adoptions and Maintenance Act, 1956](#). Section 3(b) of the Hindu Adoptions and Maintenance Act defines maintenance thus :

'maintenance' includes-

(i) in all cases, provisions for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter also the reasonable expenses of : and incident to her marriage.'

4. So, it is clear from Section 3(b)(ii) that the claim for maintenance includes claim for marriage expenses. Explanation (f) of Section 7 of the Act though does not deal with marriage expenses, the word 'maintenance' there takes in marriage expenses of the unmarried daughter. Hence, the suit is exclusively triable by the Family Court and not by a Civil Court. In the circumstances, the Sub Court, Kottarakkara has no jurisdiction to try and dispose of O.S. No. 85 of 1996. It will necessarily have to be tried by the Family Court.

5. Counsel for the respondent brought to my notice the decision reported in Kamalasanan v. Valsala, 1994 (1) KLT 737, in which it is held that a suit for declaration that the revision petitioner is bound to conduct the marriage of his

daughter and also for a mandatory injunction to provide her necessary funds for the marriage would not come under any of the matters enumerated in the explanations to Section 7 of the Act. The said decision was rendered without considering the provisions contained in the Hindu Adoptions and Maintenance Act. Hence, I am not inclined to follow the decision referred to above.

6. In the result, the C.M.C. is allowed. OS. No. 86 of 1996 on the file of the Sub-Court, Kottarakkara will stand transferred to the Family Court, Kollam to be tried along with O.S. No. 32 of 1995 pending before that Court Both the suits will be disposed of as expeditiously as possible, at the rate within six months from today.

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