

K.R. Srinathi Vs. H. Ramakrishnan

K.R. Srinathi Vs. H. Ramakrishnan

SooperKanoon Citation : sooperkanoon.com/778629

Court : Chennai

Decided On : Jan-08-1990

Reported in : AIR1990Mad330

Judge : Janarthanam, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 3 and 24; [Family Courts Act, 1984](#) - Sections 2, 7(1) and 8; Hindu Marriage Act, 1955 Sections 21 and 21A

Appeal No. : Transfer C.M.P. No. 12002 of 1989

Appellant : K.R. Srinathi

Respondent : H. Ramakrishnan

Advocate for Def. : T.V. Ramanujam, Adv.

Advocate for Pet/Ap. : G. Subramanian, for ;M/s. Geetha Ramaseshan and ;Bader Sayeed, Adv.

Judgement :

1. This is a transfer petition filed by the petitioner-wife under S. 24 of the Code of Civil Procedure (for short "Code") for transfer of the proceedings in M.O.P. No. 475 of 1989 on the file of the Family Court, Madras to the file of District Court or Subordinate Court at Coimbatore for disposal according to law solely on the ground of convenience.

2. The respondent-husband initiated the proceedings before the Family Court, Madras for divorce on the ground of cruelty. The petitioner-wife entered appearance and resisted the proceedings for divorce.

3. The respondent-husband opposed the transfer petition on twin grounds, viz.,

(1) Section 24 of the Code is inapplicable on the face of the sanguine and salutary provisions adumbrated in S. 8 of the [Family Courts Act, 1984](#) (for short 'the Act'); and

(2) Even otherwise, the convenience as a ground for transfer should have to be construed as convenience of both the parties and not the convenience of one of the parties alone to the proceedings and in that view of the matter, the balance of convenience will swing in his favour for the continuance of the proceedings in the Family Court at Madras.

4. The edifice of the emergence of the first point of opposition to the transfer petition hurled by the respondent is solely built on the combined effect of the provisions adumbrated under S. 24 of the Code and S. 8 of the Act. Let me now delve deep into those provisions and find out an answer to the question posed. In such an exercise, it is but necessary to extract, at this juncture, those provisions.

5. Section 24 of the Code runs as follows:

"24.(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may, at any stage-

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(b) withdraw any suit, appeal or other proceeding in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-sec. (1), the Court which is thereafter to try or dispose of such suit or proceeding may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. (Amended by Act 104 of 1976).

(3) For the purposes of this section,--

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(b) proceeding includes a proceeding for the execution of a decree or order (Amended by Act 104 of 1976).

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purpose of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court who has no Jurisdiction to try it. (Amended by Act 104 of 1976).

6. Section 24 of the Code as extracted above specifies the general power of transfer or withdrawal of any suit, appeal or other proceeding of the High Court and the District Court at any stage, under certain circumstances contemplated therein. This provision is nothing but the reflection of exhaustive judicial power to transfer suit etc., and no Court has jurisdiction to transfer a suit from one Court to another unless both the Courts are subordinate to it. Before an application under this section can be granted, it is implicit that two conditions should be satisfied, viz., (1) proceedings to be transferred should be pending in a Court; and (2) that Court should be subordinate to the High Court or the District Court and competent

to try and dispose of the same. The two phraseologies, viz., (1) 'any Court subordinate to it'; and (2) 'competent to try or dispose of the same' are of signal importance and the meaning to be ascribed to those phraseologies would determine the amplitude and the extent of power of transfer vested in the High Court and the District Court under this section. The Court concerned is 'Competent' when it can, as regards the nature and subject matter of the case and as regards its pecuniary value, entertain a transferred suit, but it does not include 'Competence' from the point of view of territorial jurisdiction.

7. Section 3 of the Code deals with 'subordination of Courts' and it prescribes that for the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

8. To decide the question as to whether a 'Family Court' constituted under S. 3 of the Act is a 'Civil Court' subordinate to the High Court, it is but necessary to refer to certain provisions contained in the Act. S. 2(a) defines 'Judge' thus:

"(a) 'Judge' means the Judge or, as the case may be, the Principal Judge, Additional Principal Judge or other Judge of a Family Court."

Section 2(d) defines 'Family Court' and it is in the following terms:

"(d) 'Family Court' means a Family Court established under S. 3."

9. There is also an omnibus provision in S. 2(e) giving the meaning of the words and expressions used but not defined in this Act could have the meanings respectively assigned to them in the Code and it runs as follows:

"(e) all other words and expressions-used but not defined in this Act and defined in the Code of Civil Procedure, 1908 (5 of 1908) shall have the meanings respectively assigned to them in that Code".

10. Section 7 contains a provision regarding the jurisdiction of the 'Family Court'. Sub-sec. (1) deals with the territorial jurisdiction and in so doing, it gives an indication as to the nature and character of the 'Family Court' and the sub-sections

runs as follows:--

"7. JURISDICTION--(1) Subject to 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."

11. Explanation to sub-sec. (1) of S. 7 in Cls. (a) to (g) enumerates the subject matter of disputes to be dealt with exclusively by the Family Court and they are as follows:--

"Explanation-- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:--

(a) a suit or 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;

(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 in relation to the guardianship of the person or the custody of, or access to, any minor."

12. Section 8. deals with exclusion of jurisdiction pending proceedings. Sub-sec, (a) to S. 8 deals with exclusion of jurisdiction of Civil Courts in relation to any area where a Family Court has been constituted and it is as follows:

"8(a): Where a Family Court has been established for any area.-

(a) no District Court or any subordinate Civil Court referred to in sub-sec. (1) of S. 7 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 that sub-section."

The aforesaid sub-section is moulded in such an express and explicit way as to indicate in unmistakable terms the territorial exclusion of Civil Courts in relation to an area where a ; Family Court had been constituted in respect of the subject matters arrayed under Cls. (a) to (g) under the Explanation appended to sub-sec. (1) of S. 7 of the Act. The exclusion contemplated therein is not as if one excluding the total territorial jurisdiction of the Civil Courts situate in other parts of the State so as to make it not possible for the High Court to exercise the general power of transfer as contemplated under S. 24 of the Code. Apart from this provision, no other special provision has been made in this Act as regards the transfer of proceedings pending before Family Court established in any area just like the provisions contained in Ss. 21 and 21A of the Hindu Marriage Act, 1955 as regards the transfer of proceedings initiated under that Act. It is also to be taken note of here the subject matters arrayed under Cls. (a) to (g) of Explanation appended to sub-sec. (1) of S. 7 of the Act are dealt with by the Civil Courts in other parts of the State where no Family I Court had been constituted or established. j From the provisions extracted as above viz., Ss. 7(1); 2(d) and (e) of the Act and Ss. 3 and 24 of the Code, it is rather crystal clear that the Family Court is a Civil Court subordinate to the High Court. In the absence of any. special provisions contained in the Act regarding the transfer of proceedings pending before Family Courts prohibiting the exercise of power of transfer by the High Court under S. 24 of the Code, when the other concerned Civil Courts available in other parts of the State where no Family Court had been established, are

competent to try the subject matter of disputes to be fought in Family Court, it goes without saying that the powers of transfer as contemplated under S. 24 of the Code can, by no stretch of imagination, be held to have been whittled or taken away by the provisions of S. 8 of the Act. As such, the first ground of attack bristles next to nothing and there can be no legal impediment for transfer of the proceedings pending before the Family Court, in the instant case, to any of the competent Civil Court subordinate to the High Court.

13. The other pivot of attack of the respondent hinges on the ground of convenience, in the sense of the same being considered to be the convenience of both the parties to the proceedings. It is not at all disputed that the respondent is a permanent employee in the BHEL working as a Deputy Manager, Khaperkheda at Nagpur, Maha-rashtra State and that the petitioner is permanent Officer in Bank of India, Bharathiar University Campus, Somniam- palayam, Coimbatore. Yet another undisputed fact is that petitioner is having a tender child of seven months' old. If the proceedings are allowed to be held in the Family Court at Madras, both the petitioner and the respondent have to undertake the ordeal, trouble and inconvenience of making a trip to Madras for the respective places of their present abodes due to exigencies of their official positions. One can visualise and imagine the pitiable plight of the petitioner-wife to make such trips to Madras on all the hearing dates before the Family Court, which is imperative in the very nature of the provisions contained in the Act, with the suckling baby in arms. It is of no consequence for the respondent to make the necessary trips for the purpose of attending the hearings of the proceedings to Coimbatore. In this view of the matter, the scales of convenience is more tilted in favour of the petitioner rather than that of the respondent. As such, the proceedings pending before the Family Court at Madras deserve to be transferred to a competent Civil Court at Coimbatore.

14. In the result, the petition is allowed and the proceedings in M.O. No. 475 of 1989 on the file of the Family Court, Madras are transferred to the file of the Principal Subordinate Judge, Coimbatore for disposal according to law. However, in the circumstances of the case, I make no order as to costs.

15. Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com