

M. Gomathi Vs. S. Natarajan

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Court : Chennai

Decided On : Nov-13-1972

Reported in : AIR1973Mad247; (1973)1MLJ246

Judge : Kailasam, J.

Acts : [Hindu Marriage Act, 1955](#) - Sections 19, 20 and 21; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 4, 20 and 21; Indian Divorce Act - Sections 3(3), 10 and 11

Appeal No. : Civil Revn. Petn. No. 1561 of 1972

Appellant : M. Gomathi

Respondent : S. Natarajan

Judgement :

ORDER

1. This petition is filed by the wife against the order of the Second Additional City Civil Judge on appeal from the order passed by the Sixth Assistant City Civil Judge, holding that the trial Court should first decide the question of jurisdiction before it could pass any order on an interlocutory application for payment of interim maintenance.

2. The wife filed a petition under the Hindu Marriage Act 1955 for judicial separation on the grounds of cruelty and desertion. Pending disposal of the petition the wife also prayed for interim maintenance which was ordered. The

husband submitted that the Court had no jurisdiction as the case did not fall under Section 19 of the Hindu Marriage Act in that the marriage was neither solemnized nor the husband and wife reside or last resided together within the jurisdiction of the City Civil Court. The lower appellate Court found that this question as to jurisdiction will have to be tried first and before the question is tried and the Court is satisfied that it has jurisdiction it cannot proceed to direct payment of interim maintenance. The wife has challenged the correctness of this order in this revision petition.

3. It is contended on behalf of the wife that by his conduct the husband had allowed the proceedings with regard to grant of interim maintenance to go on and therefore he should not be permitted to raise the question of jurisdiction before payment of interim maintenance as directed by the Court. If it is found that the Court has no jurisdiction to maintain the petition for judicial separation, it will obviously not have jurisdiction to try the question as to interim maintenance. To this extent the order of the appellate Court is beyond reproach.

3-A. In order to decide the question as to whether there is a triable issue or not regarding jurisdiction certain facts and question of law will have to be considered. On the facts it is not disputed, by the husband, that he is not residing within the jurisdiction of the City Civil Court. We may, therefore, proceed on the basis that the defendant in the petition is residing within the jurisdiction of the City Civil Court. Section 19 of the Hindu Marriage Act provides-

'Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.'

This section confers jurisdiction on the District Court. It further provides that the petition shall be presented to the District Court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together. Section 21 relates to the applicability of the Civil P. C. and runs as follows :

'Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated as far as may be, by the Civil P. C. 1908.'

4. It may be seen that under Section 19 the District Court within whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together has jurisdiction. In determining the applicability of the Civil P. C., the provisions of the Civil P. C. will be subject to the other provisions contained in the Hindu Marriage Act namely, Section 19, Section 20, Civil P. C. provides-

'Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction the defendant resides or the cause of action wholly or in part arises.'

If the Civil P. C. is also held to be applicable, then the Court within the local limits of whose jurisdiction the defendant resides will also have jurisdiction, Section 4 Civil P. C. provides :

'In the absence of any specific provision to the contrary nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force.'

The effect of the savings clause will be that the provisions of the Civil P. C. shall be deemed not to limit or otherwise affect any provision relating to jurisdiction provided under a special enactment. In other words by application of the Civil P.C. the provisions of the special law as to jurisdiction shall not be limited or otherwise affected. In this case, if the Civil P. C. is found to be applicable, the provisions of the special enactment will not in any way be limited or otherwise affected; on the other hand the jurisdiction of the Court extended. Now the question will be whether Section 21 of the Hindu Marriage Act will have the effect of excluding the jurisdiction that is conferred under Civil P. C. As already stated, the words used are 'subject to the other provisions contained in this Act'. Neither Section 19 nor Section 21 limit the jurisdiction to that which is provided under Section 19. Therefore Sections 19 and 21 cannot be construed as excluding the operation of

the Civil P. C. I am fortified in this view by the wording of the Code which prohibits the limiting or otherwise affecting the jurisdiction conferred by the special enactment and does not bar conferment of an extended jurisdiction by the application of the Civil P. C. The language of Sec. 19 mor Sec. 21 of the Hindu Marriage Act does not exclude the application of the Civil P. C.

5. Learned counsel for the respondent submitted that as Section 19 states that every petition under the Hindu Marriage Act shall be presented to the District Court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together the petition shall not be presented to any other Court. Though the wording might lend some support to the contention raised on behalf of the husband, it would rather be in keeping with the spirit of the section to confine the mandatory provision shall be presented to the District Court' and read the later part as to jurisdiction as not mandatory but a provision conferring jurisdiction. Thus construed, the jurisdiction that is conferred by the Civil P. C. will not be excluded. A comparison of the provisions of the Hindu Marriage Act with that of the Indian Divorce Act will show that under the Indian Divorce Act, because of the definition of 'District Court' jurisdiction of Civil Courts as conferred by the Civil P. C., is barred, Section 3(3) of the Indian Divorce Act defines 'District Court' as meaning in the case of any petition under the Act the Court of the District Judge within the local limits of whose ordinary jurisdiction under the Act the husband and wife reside or last resided together. By the definition, if the husband and wife do not reside or have not resided together, it will not be a District Court under the Act and under Sections 10 and 11 the husband or wife may present a petition to the District Court or to the High Court, the District Court being necessarily one that comes within the jurisdiction of the Act. Because of the definition which excludes District Court within whose jurisdiction the husband and wife do not reside or have last resided together and as the application is subject to the provisions of the Indian Divorce Act, the provisions of the Civil P. C. conferring jurisdiction on the District Court where the defendant is residing cannot be made applicable.

6. Though there had been no decisions on this question reference may be made to a case wherein the jurisdiction of the Court was challenged on the ground that the

cause of action as mentioned in the section did not arise within the local limits of the jurisdiction of the District Court. In *Hariram Dhalumal v. Jasoti*, : AIR1963 Bom176 , the marriage was solemnized before the partition of India, at Karachi. The parties separated in Karachi. After partition, the parties came to India separately. The husband was employed in Delhi and the wife at Nagpur. The husband applied under Section 19 for divorce in the Nagpur Court. Neither was the marriage solemnized within the jurisdiction of the Court nor did the husband and wife reside or last resided together within the jurisdiction of the Nagpur Court. In the circumstances, the Court held-

'..... where the provision as to jurisdiction specifically contained in Section 19 of the Hindu Marriage Act viz., the place of solemnization of marriage or place of residence of husband and wife, either separately or together, within the jurisdiction of the Court is impossible of satisfaction, in my opinion the provisions of Section 20, Civil P. C. are sufficient to create jurisdiction in the ordinary Civil Court at a place where either the defendant resides or the cause of action is said to arise.'

This decision would support the contention of the learned counsel for the petitioner that the Civil Court would also have jurisdiction. I am of the view that on reading Sections 19 and 21 of the Hindu Marriage Act and Sections 4 & 20 Civil P. C., the Court will be justified in holding that the provisions of the Civil P. C. are also applicable and the Court within whose jurisdiction the defendant is residing will have jurisdiction.

7. As in this petition the defendant is admittedly residing within the jurisdiction of the City Civil Court the Court will have jurisdiction to entertain the wife's petition for judicial separation as well as her petition for interim maintenance. The civil revision petition is allowed and the order of the lower appellate Court is set aside. The trial Court will proceed with the petition for judicial separation. In view of this judgment it is unnecessary for it to consider the issue as to jurisdiction. The order as to interim maintenance will also stand. Time for payment of interim maintenance two months from this date.

Revision allowed.

