

Jayrajan Vs. Sabitha

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Court : Kerala

Decided On : Aug-17-2011

Reported in : 2011(4)KLJ256; 2011(4)ILR(Ker)306; 2011(4)KLT262;
2011(4)KHC174

Judge : Thottathil B. Radhakrishnan & K. Surendra Mohan

Appeal No. : Unnumbered Mat.A. of 2011 (ZMA.173/11)

Appellant : Jayrajan

Respondent : Sabitha

Judgement :

Thottathil B. Radhakrishnan, J.

“C.R.”

1. This appeal under Section 19 of the Family Courts Act, 1984, “FC Act”, for short, is treated by the Registry as defective on the ground that the certified copy of the impugned order is not produced by the appellant.

2. The matter was sent up to the Bench on the request of the appellant’s advocate, who answered the noted defect by stating that “certified copy of the order is not received”. By order dated 17.8.2011, the Registry was required to say as to why the appeal is treated as defective.

3. Thereupon, Registry states that all copies furnished by the court shall be certified to be true copies by the officer appointed for the purpose and shall be sealed with the seal of the court in terms of Rule 253 of the Civil Rules of Practice, referred to hereinafter as “CRP”, for short, and that Rule 254 of those Rules states that every copy shall bear an endorsement initially by the Fair Copy Superintendent or the Examiner, as the case may be, showing the eleven (11) items of particulars enumerated in that Rule. According to the Registry, the copy of the impugned order, produced along with the memorandum of appeal, does not contain the endorsement regarding the Number and Date of application, Date of calling for stamp papers, Date of production of stamp papers, etc. Obviously, the Registry was making reference to the different endorsements that have to be there, if Rule 254 of CRP were to be followed. It is also stated that no court fee stamp is seen affixed on the copy, except the document fee stamp fixed by the appellant while filing the appeal. The Registry, therefore says that the copy produced, seems to be a free copy issued by the Family Court. This, therefore, is the substratum of the objection of the Registry to register the appeal on the basis of the copy of the impugned order, produced by the appellant.

4. Section 19 of the FC Act makes provisions for appeals and other proceedings, notwithstanding anything contained in the Code of Civil Procedure, “CPC” for short, or the Code of Criminal Procedure, for short, “Cr.PC”. Section 21 of the FC Act empowers the High Court to make, by notification in the Official Gazette, such rules as it may deem necessary for carrying out the purpose of that Act. In exercise of such power, the High Court of Kerala made in Family Courts (Procedure) Rules, 1989, hereinafter referred to as the “Procedure Rules”. They are part of authorized subordinate legislation. They are statutory rules and have such effect by virtue of the FC Act. Rule 11 of the Procedure Rules provides, amount other things, that the rules framed by the High Court under section 122 of CPC for regulating the procedure of civil courts subordinate to it shall apply to the Family Courts, in so far as they are not inconsistent with the provisions of the FC Act and the Procedure Rules. Section 20 of the FC Act provides that the provisions of that Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than that Act.

5. Rule 10(1) of the Procedure Rules provides that a copy of every

JUDGMENT / ORDER

against which an appeal lies under section 19 of the FC Act, shall be given free of cost to the parties. Sub rule 2 of Rule 10 provides for an endorsement at the top of the first page of the judgment or order that an appeal can be preferred to the High Court of Kerala within a period of 30 days from the date of the

against which an appeal lies under section 19 of the FC Act, shall be given free of cost to the parties. Sub rule 2 of Rule 10 provides for an endorsement at the top of the first page of the judgment or order that an appeal can be preferred to the High Court of Kerala within a period of 30 days from the date of the

JUDGMENT / ORDER

. Rule 13 of the Procedure Rules enjoins that every appeal under section 19(1) of the FC Act shall be accompanied by a copy certified to be true copy by the court which passed the judgment. Therefore, all that is required to be produced along with an appeal under section 19(1) of the FC Act is the copy certified to be the true copy by the court which passed the judgment. There is no further prescription in the Procedure Rules requiring the appeal to be accompanied by a copy certified in terms of Rules 253 and/or 254 of CRP. The Procedure Rules do not prescribe for affixture of stamps on the certified copy of the order by the issuing court. Those Rules also do not insist that a certified copy of the order of a Family Court would be issued only on an application.

6. Civil Rules of Practice are made by the High Court of Kerala by virtue of the power conferred under Section 122 of the CPC, Kerala Court Fees and Suit Valuation Act, 1959 and all other powers thereunto, enabling the making of such rules. Obviously therefore, it is an instrument having effect by virtue of laws other than the FC Act. Hence, the overriding effect of the FC Act in terms of Section 20 of that central enactment will override any prescription in CRP which is inconsistent with the provisions of the FC Act. The Procedure Rules having been issued in exercise of the statutory power contained in Section 21 of the FC Act,

those rules also would get the protection of Section 20 and would, therefore, have overriding effect over CPC to the extent of inconsistency. Hence, in view of the prescriptions in Rules 10 and 13 of the Procedure Rules, Rules 253 and 254 of CRP would not apply to certified copies issued by the Family Court.

7. Adverting to the certified copy produced along with the appeal in hand, it can be seen that the same is certified to be a true copy by the court that passed the judgment. Such certification is made by the Sheristadar, that is, the chief ministerial officer of that court. That is due certification. In the light of what is stated above, the objection of the Registry does not stand.

Hence, it is ordered that the appeal shall be treated as submitted appropriately and shall be numbered.

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