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S.Krishnamurthy Vs. Poubalane

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Court : Chennai

Decided On : Mar-06-2013

Judge : R.S.Ramanathan

Appellant : S.Krishnamurthy

Respondent : Poubalane

Judgement :
IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

06. 03.2013 CORAM: THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN C.R.P(PD)No.1477 of 2012 and M.P.No.1 of 2012 S.Krishnamurthy .. Petitioner/1st Defendant Vs. 01.Poubalane .. 1st respondent/Plaintiff 02.Mangalakshmi 03.E.Santha Ammal 04.Kanitha Devi 05.Kathiresan 06.Valli 07.J.Karthik (Minor) Rep. by his mother and Natural Guardian Valli, 6th respondent 08.Latha 09.Vanithamani 10.Devanathan .. R2 to R10/D2 to D10 PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order passed on 25.01.2012 in I.A.No.17 of 2011 in O.S.No.17 of 2011 on the file of the II Additional District Judge at Pudducherry. For Petitioner : Mr.T.Dhanasekaran For 1st Respondent : Mr.D.Ravichander O R D E R The first defendant in O.S.No.17 of 2011 on the file of the II Additional District Judge at Pudducherry is the revision petitioner. 2.The first respondent herein filed the above suit for declaration that he is the legitimate son of the deceased Krishnasamy Gounder and Adhilakshmi or alternatively, if for any reason this Hon'ble Court considers that he is not the legitimate son, he may

be declared as illegitimate son of Krishnasamy Gounder and to pass a preliminary decree and allot half share to the plaintiff and half share to the defendants. 3.In that suit, the revision petitioner filed an application under Order XIV Rule 5 CPC to frame additional issues as stated in the petition and that application was partly allowed and the issues were re-cast by the Court below. Aggrieved by the same, this revision is filed. 4.It is submitted by Mr.T.Dhanasekaran, the learned counsel for the revision petitioner that having regard to the prayer, prayed for by the first respondent/plaintiff to declare himself as legitimate son or illegitimate son of the deceased Krishnasamy Gounder and Adhilakshmi, the civil Court has no jurisdiction to decide that issue as per section 7(1) r/w 8 of the Family Courts Act, 1984 and for that purpose and to frame other issues, the application was filed by the petitioner to frame additional issues and the first additional issue sought to be framed was whether the Court lacks jurisdiction to adjudicate and decide upon the issue of legitimacy of the plaintiff, in view of section 7(1) read with Section 8 of the Family Courts Act, 1984 and while recasting the issue, the Court below has framed the first issue as Is not the plaintiff is illegitimate son of Krishnasamy Gounder through the second wife Adhilakshmi and the Court below failed to frame the issue as stated in the petition filed by the petitioner and the Court below ought to have framed the issue, whether the Court has got jurisdiction to adjudicate and to decide the issue of legitimacy, in view of section 7(1) read with section 8 of the Family Courts Act, 1984 and therefore, non-framing of issue, as stated in the petition is detrimental to the petitioner and by answering the issue as stated in the petition by the petitioner, the jurisdiction of the Court is questioned by the petitioner and therefore, the Court below failed to appreciate the petition filed by the petitioner and ought to have recast the first issue submitted by the petitioner in his petition for framing additional issues and the civil Court has no jurisdiction to decide the issue of legitimacy and only Family Court has got jurisdiction and therefore, the order of the Court below is liable to be dismissed and the lower Court may be directed to frame the first additional issue given by the petitioner in the petition as one of the issues and decide that issue as a preliminary one. 5.On the other hand, Mr.D.Ravichander, the learned counsel for the first respondent submitted that having regard to the main prayer in the suit, the jurisdiction of the civil Court is not ousted and a suit was filed by the first respondent for partition and

incidentally to grant the relief of partition, the first respondent/plaintiff also prayed for declaration that he is the legitimate son of Krishnasamy Gounder and Adhilakshmi or in the alternative as illegitimate son Krishnasamy Gounder and in any event, he is entitled to claim half share and as a matter of fact, there is no need to pray for such declaration and the Court can give incidental finding about the legitimacy or illegitimacy of the first respondent, while deciding the issue relating to the entitlement of half share in the property by the first respondent/plaintiff. 6.He further submitted that the scope of Family Courts Act is entirely different and in matrimonial matters or in matters relating to guardian, if a question arises regarding the legitimacy or illegitimacy, that has to be decided by the Family Court, as per sections 7 and 8 and having regard to the suit for partition, it can be decided only by the civil Court and a Family Court cannot decide the suit for partition and therefore, the jurisdiction of the civil Court has not been ousted and there is no need to decide the question of jurisdiction in the preliminary issue and the civil Court has got jurisdiction to entertain the suit. 7.I am unable to accept the contention of the learned counsel for the revision petitioner. The Family Courts Act, 1984 (66 of 1984) was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith. Section 7 of the Family Courts Act deals with jurisdiction and as per Section 7(1), explanation (e), in a suit or proceeding for declaration as to the legitimacy of any person will come under the jurisdiction of the Family Court. Therefore, having regard to the object of the Family Courts Act, as stated above and section 7 which deals with the jurisdiction of the Family Court, it is made clear that whenever a dispute arises between the husband and wife in respect of their marriage, whether the marriage is valid or not or whether a person is a legally wedded wife or husband of another person or in respect of property of the husband and wife and in respect of any matters arising out of a marital relationship, the Family Court had exclusive jurisdiction. Similarly, in a suit or proceeding for a declaration as to the legitimacy of any person or a suit or proceeding for maintenance or a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor, the Family Court will have exclusive jurisdiction. But the underlining factor must be that a suit or proceeding

referred to in section 7(2) of the Family Courts Act must be between the husband and wife and when the suit is not between the husband and wife, even though such questions have arisen in any other suit, wherein the Court has to give an incidental finding, the Family Court will not have any exclusive jurisdiction. 8.The learned counsel for the revision petitioner relied upon the judgment of the Hon'ble Supreme Court reported in AIR 200.SC 3500.in the case of Renubala Moharana and another vs. Mina Mohanty and others, in support of his contention and according to me, that judgment does not support the case of the petitioner and as per the judgment, it is made clear that the question of status of child in relation to the parties to the petition can be incidentally gone into by the Family Court, if necessary, while deciding the guardianship petition. In that reported case, the appellant before the Supreme Court filed a petition under section 7 of the Guardians and Wards Act r/w 7 of the Family Courts Act and prayed for declaration that late Samuel Maharana nick named as Gulu' is the father of the minor child and not the second respondent in that petition and the birth certificate obtained by the first respondent is not valid and also prayed for the appointment of the petitioners as guardians of the person of the minor child. The Family Court held that the petition itself was not maintainable in the light of section 7 of the Family Courts Act and the High Court also held that as regards the first relief sought for by the appellant, the same cannot be granted by the Family Court for the reason that the declaration as to the legitimacy of any person without any claim of martial relationship is not directly entertainable by the Family Court. However, the High Court held that the prayer for guardianship and custody is maintainable before the Family Court and while deciding that issue, the Court can incidentally consider the question of status of the minor. That view was challenged before the Hon'ble Supreme Court and while dismissing the appeal, the Hon'ble Supreme Court held that the question of status of the child in relation to the parties to the petition can be incidentally gone into by the Family Court, if necessary, while deciding the guardianship petition and the declaratory relief as regards the illegitimacy of the child cannot be granted by the Family Court. Therefore, when applications are filed by the parties to the marriage and when they seek for declaration that the child is legitimate or illegitimate son of one of the parties, that can be decided by the Family Court and the Family Court has got exclusive

jurisdiction and when the suit is not between the husband and wife, and the suit is filed for division of properties and husband or wife are not the parties to that proceedings and no declaration regarding the legitimacy or illegitimacy is sought for against the father or mother, the Family Court cannot have exclusive jurisdiction and the civil Court has got jurisdiction. In this case, the suit was filed by the first respondent for declaration of his status as legitimate or illegitimate son of Krishnasamy Gounder and Adhilakshmi and both of them are not parties to the suit and the main prayer is for partition of his half share in the property. It is the case of the first respondent/plaintiff that one Krishnasamy Gounder married Adhilakshmi in the year 1935 and the first respondent was borne to them on 25.07.1937 and the mother of the first respondent/plaintiff died on 15.09.1940 and thereafter, Krishnasamy Gounder married another woman, by name Virudhambal and through her one Seetharama Gounder was born, who was the father of the respondents 1 to 3. Therefore, the first respondent/plaintiff filed a suit for partition and also prayed for declaration to declare his legitimacy. Therefore, these reliefs cannot be granted by the Family Court and therefore, the Court below has rightly recast the issue, whether the plaintiff is the legitimate son of Krishnasamy Gounder through the first wife Adhilakshmi and there is no need to frame an issue relating to jurisdiction of the civil Court as claimed by the revision petitioner. Hence, the Court below has rightly recast the issue by omitting to frame the issue regarding the exclusive jurisdiction of the Family Court and I do not find any infirmity in the order of the Court below and the revision is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs. er To The II Additional District Judge Pudducherry

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