



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(FC) No. 29 of 2022

Reserved on 17.12.2025.

Date of decision: 31.12.2025.

Astha Thakur

...Appellant.

Versus

Dhananjay Kanwar

...Respondent.

Coram

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Romesh Verma, Judge.

Whether approved for reporting? ¹ Yes

For the appellant.

Mr. Vikrant Thakur, Advocate

For the Respondent:

***Mr. Bhupender Gupta, Sr. Advocate with
Mr. Pranjal Munjal, Advocate.***

Vivek Singh Thakur, Judge

Appellant has preferred this appeal against impugned order dated 12.10.2022, passed by Principal Judge, Family Court, Hamirpur, H.P. in CMA No. 102 of 2017, filed by the appellant under Section 27 of the Hindu Marriage Act, 1955, for return of property/Istridhan, gifts and other articles, in HMA Petition No.140 of 2016 (Reg. No.302 of 2016) preferred under Section 13(1)(ia) of the Hindu Marriage Act, titled as

¹ Whether the reporters of the local papers may be allowed to see the judgment?

Astha Thakur vs. Dhananjay Kanwar, for dissolution of her marriage with the respondent.

2. Admittedly, HMA Petition No.140 of 2016 (Reg. No.302/2016) has been allowed by passing ex-parte decree of divorce in favour of the appellant on 31.01.2018, however, application preferred under Section 27 of Hindu Marriage Act, was not decided along with the main petition and it was adjudicated later on and dismissed by the Principal Judge, Family Court by passing impugned order, by returning finding that once a decree for dissolution of marriage has been passed, and provision for disposal of property has not been made in the said decree, no independent order can be passed in an application preferred with respect to property including an application preferred under Section 27 of the Hindu Marriage Act, during pendency of the main petition, and also on the ground that the application preferred by the appellant under Section 27 of the Hindu Marriage Act, was not maintainable, being not in purview of the powers of the Family Court in the capacity of matrimonial/Family Court, exercising jurisdiction under Section 27 of the Hindu Marriage Act, and ultimately, it was held that the Family Court was not possessing jurisdiction to entertain the application and accordingly, no findings were returned on merit, but application was dismissed being not maintainable, before the Family Court.

3. I have heard learned counsel for parties and have also gone through the record.

4. Learned counsel for the respondent has supported the findings returned by the Family Court for reasons assigned therein, which has been rebutted by the learned counsel for the appellant by referring pronouncements of the Supreme Court in **Balkrishna Ramchandra Kadam vs. Sangeeta Balkrishna Kadam, reported in (1997) 7 Supreme Court Cases 500** and **Balram Yadav vs. Fulmaniya Yadav, reported in (2016) 13 Supreme Court Cases 308**.

5. The Family Court Act has been 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 by exclusively providing within the jurisdiction of Family Court in the matters relating to matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights or declaration as to the validity of marriage and as to the matrimonial status of any person; property of spouse or of either of them; and declaration as to legitimacy of any person; guardianship of a person or custody of any minor and maintenance including proceedings under Chapter IX of Criminal

Procedure Code (now Chapter 10 of Bharatiya Nagarik Suraksha Sanhita), as evident from the statement of objects and reasons. ◇

6. Chapter III of Family Court Act deals with jurisdiction, wherein Section 7 and Section 8, read as under:-

7. Jurisdiction.—(1) Subject to the 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.

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 circumstance 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.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—

- (a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
- (b) such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings.—Where a Family Court has been established for any area,—

- (a) no district court or any subordinate civil court referred to in sub-section (1) of section 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;
- (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);
- (c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974),—
 - (i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and
 - (ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established,

shall stand transferred to such Family Court on the date on which it is established.

7. Chapter VI of Family Court Act, dealing with miscellaneous provisions in Section 20, provides as under:-

20. **Act to have overriding effect.**—The provisions of this 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 this Act.

8. Explanation (c) of Section 7(i) of Family Court Act unambiguously provides that Family Court shall have jurisdiction to adjudicate a suit or proceedings between the parties to a marriage with respect to property of the parties or of either of them. Section 8 excludes the jurisdiction of all other Courts including Civil Courts related to the matters triable by Family Court wherever a Family Court has been established. Section 20 gives overriding effect to the provisions of Family Court Act notwithstanding anything inconsistent therewith, contained in any other law, for time being in force.

9. From the above provisions, it is apparent that irrespective of any provision in any other law including the Hindu Marriage Act, the Family Court has a jurisdiction to adjudicate a suit and proceedings related to property dispute related to property of the parties or of either of them, between the parties to a marriage.

10. The aforesaid view is also substantiated by the judgments in **Balkrishna Ramchandra Kadam** and **Balram Yadav** cases, relied upon by the learned counsel for the appellant.

11. Section 27 of the Hindu Marriage Act reads as under:-

27. Disposal of property.- In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

12. No doubt, Section 27 of the Hindu Marriage Act, speaks about disposal of any property presented at or about the time of marriage, which may belong jointly to both the husband and the wife.

13. However, considering the ratio of judgments referred supra and overriding effect of the enactment of Family Court Act as well as provisions of Sections 7 and 8 of the Family Court Act, a harmonious construction has to be given to the provisions of Hindu Marriage Act as well as Family Court Act.

14. It is also noticeable that in Section 27 of Hindu Marriage Act, the word 'may' has been used at both places by stating that "Court may make such provisions in the decree", as well as with respect to any property 'which may belong jointly to both the husband and the wife'.

Therefore, Court may or may not make provisions with respect to disposal of property belonging jointly to both the husband and the wife and, therefore, it nowhere excludes the jurisdiction of the Family Court from entertaining an application independent of passing of decree in the main matter, particularly, in view of the provisions of Section 7 of Family Court Act with special reference to explanation (c) referred supra. Otherwise

also, there is no bar under Section 27 or any other provisions of Hindu Marriage Act as well as Family Court Act, dis-entitling jurisdiction bestowed upon the Family Court under Section 7 of the Family Court Act to adjudicate suit or proceedings related to property of spouses or of either of them. Rather, on account of overriding effect contained in Section 20 of the Family Court Act and exclusion of jurisdiction under Section 8 of the Family Court Act, it is a Family Court, which has exclusive jurisdiction to decide the dispute between the spouses related to the property, belonging to them jointly or either of them.

15. Admittedly, in present case, Family Court has not adjudicated the claim of the appellant either way. It is also noticeable that property referred in the application is not only the Istridhan, but application has been filed for return of property/Istridhan, gifts and other articles, which may belong jointly to both the husband and the wife or may be belonging only to the appellant and identification of such property shall be subject to pleadings as well as evidence to prove the same, produced by the parties.

16. We are aware that under Section 27 of the Hindu Marriage Act, the Court may pass an order with respect to the property presented at or about the time of marriage, which may belong jointly to the husband and the wife.

17. It is also apt to record that there may be some property covered under Section 27 of the Hindu Marriage Act, but there may be certain other property, which may not be found covered under Section 24 of the Hindu Marriage Act, but the Family Court has jurisdiction to entertain, adjudicate and decide a petition/application with respect to dispute of property between the parties to the marriage as provided under Section 7 of the Family Court Act.

18. Therefore, we are also of the opinion that irrespective of mention of provision of Section 27 of the Hindu Marriage Act only, the application shall be adjudicated and decided by Family Court, particularly keeping in view the provisions of Section 7 of the Family Court Act in order to avoid multiplicity of litigation, as in present case, marriage already stands dissolved by passing a decree, which has been accepted by the respondent-husband. We are not relegating the parties to another litigation to file a suit or proceedings separately with respect to the property not covered under Section 27 of the Hindu Marriage Act or to file a separate suit under Section 7(i) read with explanation (c) of the Family Court Act.

19. In view of above, we are constraint to set-aside the order passed by the Family Court and remit the matter to the Family Court to decide the issues involved in the application in accordance with law by

granting opportunity to the parties to adduce evidence, necessary to establish their respective claims, before the Family Court. The Family Court shall draw up a decree accordingly.

20. As the decree of divorce has already been passed, the decree, if any, is passed under Section 27 of Hindu Marriage Act, would be a separate decree, but in the facts and circumstances of the case, such decree shall be treated as a part of the decree of divorce already granted by the Family Court, which has become final.

21. It is made clear that except holding that the Family Court has jurisdiction to adjudicate the suit or proceedings related to dispute between the parties to the marriage, with respect to the property belonging to both or either of them, we have not expressed any opinion with respect to the claim of the either party with respect to the property referred in the application. Such issues shall be decided by the Family Court on its own merit independently, not being influenced by any observation made by this Court in this order.

22. Parties are directed to appear before the Family Court on **17.02.2026**, on opening of the Trial Court, immediately after winter vacations.

23. No fresh notices shall be issued to them. Failure in appearing before the Family Court shall invite adverse order and in that

eventuality, no fresh notice shall be issued to the party in default and the Family Court shall proceed further in accordance with law.

24. Records be sent back. Registry is directed to transmit a copy of order to the Family Court for compliance.

25. Appeal disposed of in aforesaid terms along with pending applications, if any.

**(Vivek Singh Thakur),
Judge.**

**(Romesh Verma),
Judge.**

31st December, 2025
(Susheel)