



IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No. 122 of 2024

[In the matter of an appeal under Section 100 r/w order XLII Rule 1 of the Code of Civil Procedure, 1908.]

Kshirbati @ Kharabati Naik Appellant

-Versus-

Premasila Naik & Anr Respondents

Advocate(s) appeared in this case :-

For Appellant : Ms. S.Jena, Advocate

For Respondent: Mr. B. S.Dash, Advocate
Advocate

CORAM

JUSTICE SASHIKANTA MISHRA

JUDGMENT

4th March, , 2025

SASHIKANTA MISHRA, J. This is an appeal filed by defendant No.1 against a reversing judgment.

2. The judgment passed by the learned District Judge, Deogarh on 16.02.2024 followed by decree in RFA No. 11 of 2023 is under challenge whereby, the judgment passed by learned Civil Judge, Senior



Division, Deogarh in C.S. No. No. 79/ 2021 followed by decree, was confirmed.

3. For convenience, the parties are referred to as per their respective status before the trial Court.

4. In view of the order proposed to be passed, it is not felt necessary to relate the facts of the case in detail. It would suffice to only mention that the suit in question was filed by the plaintiff seeking a declaration that she is the only legally married wife of Srimukha Naik with negative declaration that defendant No.1 is not the legally wedded wife of Srimukha Naik with further prayer to direct defendant No.3 to disburse all the pensionary benefits in her favour. Be it noted that said Srimukha Naik died on 25.07.2021, leaving behind the plaintiff and his children one of whom namely, Arati Naik was impleaded as defendant No.2 in the suit. It is alleged that Srimukha Naik was never married to defendant No.1 and as such she is not entitled to family pension.



5. The defendant Nos.1 and 2 contested the suit by filing a joint written statement denying the plaint averments. Defendant No.1 claimed to be first wife of Srimukha Naik and that four children were born out of said wedlock. She also contends that the plaintiff is not the legally wedded wife of Srimukha Naik. She was declared as nominee by her husband at the time of preparation of pension papers. Her husband Srimukha Naik had illicit relationship with the plaintiff. Further, she has received the pensionary benefits from the defendant No.3 bank as per direction of the Accountant-General of Odisha.

6. The Central Bank of India defendant No.3 also appeared and contested the suit by filing a written statement denying the plaint averments. It was inter alia stated that as per the instructions of Treasury Officer, Deogarh, pension has been disbursed in favour of Srimukha Naik and thereafter, to his nominee, defendant No.1.



7. The trial Court framed nine issues and after analysing the oral and documentary evidence on record dismissed the suit. The plaintiff carried the matter in appeal. On re-appreciation of the oral and documentary evidence on record, the First Appellate Court was not inclined to concur with the findings of the trial Court. The appeal was allowed in part by setting aside the impugned judgment and decree and by declaring that the plaintiff is the legally married wife of Srimukha Naik and as such, defendant No.1 is not the legally married wife of Srimukha Naik.

8. Being aggrieved, defendant No.1 has filed the instant Second Appeal which was admitted on the following substantial question of law:

(i) Whether both the Courts below were correct in entertaining the suit and the appeal arising therefrom in view of Section 7 of the Family Courts Act read with Section 8 of C.P.C?

9. Heard Ms. S. Jena, learned counsel for the appellant-defendant No.1 and Mr. B.S.Das, learned counsel for plaintiff-respondent No.1.



10. Ms. Jena assails the impugned judgments on the ground that a Family Court having been established constituted for the district of Deogarh, the Courts below lacked jurisdiction to entertain and adjudicate the dispute. Ms. Jena further submits that the prayer of the plaintiff as laid in the plaint squarely falls within the jurisdiction of the Family Court as per Section-7. Since the Family Court was established at Deogarh during pendency of the suit, the trial Court, or for that matter the First Appellate Court, lacked jurisdiction to continue with the suit/appeal in view of the express bar under Section-8 of the Family Courts Act.

11. Mr. B.S.Das, learned counsel appearing for the plaintiff would submit that the plaintiff claimed declaration as regards her status vis-a-vis that of defendant No.1 and on such basis claimed a further direction to the bank (defendant No.3) to disburse all pensionary benefits in her favour. This, according to Mr. Das, is therefore, a purely civil dispute over which



the civil Courts alone have jurisdiction. He however, fairly submits that the declaration sought for by the plaintiff was with regard to her marital status as also that of defendant No.1.

12. Reference to the plaint filed in the suit reveals that the following relief was claimed.

- “ i. The suit be decreed in favour of the plaintiff by declaring she is the only legal married wife of Srimukha Naik;*
- ii. It be declare that the def. No-1 is / was not a legally married wife of Srimukha Naik;*
- iii. The def. No-3 be directed to disbursed all the pension benefit (arrears) and month to month regularly till the end of the life of the plaintiff to the plaintiff;*
And in event of disbarment of pension if done in favour of the def.No-1 prior to filing of this suit, the def. No-3 be directed to recover the same from the def. No-1 and pay to the plaintiff;
- iv. Any other relief(s) the plaintiff is entitled in law & equity be granted with cost of the suit;*

And for which the plaintiff is in duty bound shall ever pray.”

13. It is not disputed that the State Government in consultation with this Court established the Family Court in the district of Deogarh by notification dated 23.07.2018. Said notification is extracted below for immediate reference:

GOVERNMENT OF ODISHA
LAW DEPARTMENT



NOTIFICATION

The 23/7/2018.

No.IJ-39/2018 787s: In exercise of the powers conferred by clause (b) of sub-section (1), read with sub-section (2) of section 3 of the Family Courts Act, 1984 (66 of 1984), the State Government, in consultation with the High Court of Orissa, do hereby establish a Family Court in the district of Deogarh with headquarters at Deogarh with effect from the date the said Court functions within the local limits of jurisdiction co-extensive with the revenue sub-division of Deogarh

By order of the Governor
Principal Secretary to Government

By letter dated 13.12.2021, this Court fixed 23.12.2021 as the date and time for opening of the Family Court at Deogarh. Said letter is quoted hereinbelow:

THE HIGH COURT OF ORISSA: CUTTACK

No. 15293
XVIII-20/2018

From
The Special Officer (Admn).
To
The District & Sessions Judge, Deogarh.

Cuttack dated the 13th December 2021

Sub Opening of the Family Court at Deogarh in the District of Deogarh on 23 12 2021 at 9.30 A. M.

Sir

With reference to the above noted subject, I am directed to say that the Court are pleased to fix 23 12.2021 at 9 30 AM to be the date and time for opening of the Family Court at Deogarh in the District of Deogarh Hon'ble the Chief Justice has kindly consented to inaugurate the said new Court in presence of Hon'ble Shri Justice Arindam Sinha on the scheduled date by Virtual Mode.

I am, further directed to request you to remain in readiness, to provide requisite technical support as well as to take all necessary steps in consultation with the Central Project Co-



ordinator of the Court for opening of the said new Court through Virtual Mode while strictly observing the COVID guidelines and also to transfer the case records and deploy necessary staff well in advance to the newly established Family Court at Deogarh for smooth functioning of the said Court after opening.

*Yours faithfully.
Special Officer (Admn.)I/C*

14. The suit was filed on 29.11.2021 as evident from the order sheet of the trial Court. So, as on the date of filing of the suit, the Family Court at Deogarh had been established but had not become functional. It started functioning almost a month later i.e. on 23.12.2021. It now, needs to be examined as to if the relief claimed in the suit is a matter within the exclusive jurisdiction of the Family Court or not.

15. Reference to Section 7 under Chapter-III, Family Courts Act, 1984 relates to jurisdiction. Section 7 reads as follows;

*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.

It is evident that the suit being one for a declaration as to the validity of marriage between the plaintiff and Srimukha Naik as also for negative declaration regarding the marital status of defendant No.1 vis-a-vis Srimukha Naik, the dispute squarely falls within the



purview of Clause-(b). The other relief claimed, that is, for direction for disbursal of pensionary benefits, is obviously consequential being entirely dependent upon the main relief claimed. Thus, the matter which ought to have been dealt with by the Family Court after its establishment and functioning was entertained by the Civil Court. At the stage, it would be useful to refer to Section 8, which is quoted hereinbelow;

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.



Clause-(a) of the provision quoted above clearly bars the jurisdiction of the Civil Court in respect of any matter in respect of any suit or proceeding of the nature referred to in the explanation to that subsection. Clause-(c) makes it clear that any suit or proceeding of the nature referred to in explanation to Subsection (1) of Section 7, which is pending immediately before the establishment of the Family Court before any district Court or subordinate Court over which a Family Court alone has jurisdiction on the date on which it is established shall stand transferred to the Family Court.

16. As already stated, the Family Court at Deogarh started functioning w.e.f. 23.12.2021. Therefore, in view of Clause (a) of Section 8, the Court of Civil Judge, Senior Division at Deogarh lacked jurisdiction to adjudicate upon the matter any further. Further, as per the provision under Clause-(c), the suit ought to have been transferred to the Family Court. In the case



of **Balaram Yadav vrs. Fulmaniya Yadav**¹ it was held that a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court. Further, it makes no difference as to whether the relief claimed is affirmative or negative. What is important is the declaration regarding the matrimonial status.

17. It is surprising that even after establishment and functioning of the Family Court, the trial Court not only proceeded with the suit but also decided it finally. Even more surprisingly, the First Appellate Court entertained the appeal arising out of the judgment and the decree of the trial Court and reversed the same. It is true that the question as to jurisdiction of the courts vis-à-vis the Family Courts Act was never raised either before the trial Court or the First Appellate Court but then, the same is immaterial in view of the fact that the question of jurisdiction goes to the root of the matter

¹ 2016 (II) OLR (SC) 125



and the judgment passed by the Court lacking jurisdiction is obviously a nullity. Moreover, in view of the exclusion of the jurisdiction of the Civil Court as per Section 9 of the CPC, the suit and the appeal arising therefrom could not have been entertained and decided by the Courts below. It is reiterated that the Civil Court shall have no jurisdiction to entertain a suit where the same is expressly barred under any law. In the instant case, the jurisdiction of the Civil Court to adjudicate the dispute is expressly barred by the provisions of Sections 7 and 8 of the Family Courts Act.

18. From the conceptus of the analysis made hereinbelow, this Court finds that trial Court committed manifest error and illegality in not transferring the suit to the Family Court after its functioning. This Court also holds that the First Appellate Court committed illegality in entertaining the appeal arising out of the judgment passed by the trial Court, which itself was a nullity.



19. In the result, the appeal succeeds and is therefore, allowed. The impugned judgments and decrees passed by both the Courts below are hereby set aside. The trial Court is directed to immediately transmit the records to the Family Court at Deogarh for hearing of the matter afresh. In doing so, the Family Court shall not be influenced by the judgments passed by the trial Court as well as the First Appellate Court in any manner. Further, the suit being of the year 2021, the Family Court shall endeavour to dispose of the same as expeditiously as possible, preferably, within eight months from the date of receipt of records.

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Sashikanta Mishra,
Judge

Deepak

Signature Not Verified

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Signed by: DEEPAK PARIDA
Reason: Authentication
Location: OHC,Cuttack
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