

O.P.No.599 of 2018 and
A.No.5445 of 2018 and O.A.Nos.539 and 540 of 2021

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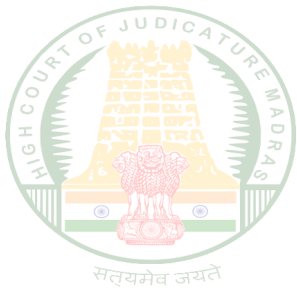
O.P.No.599 of 2018
and
A.No.5445 of 2018 and O.A.Nos.539 and 540 of 2021

P.N.PRAKASH, J.
M.SUNDAR, J.
and
A.A.NAKKIRAN, J.

(Order of the Court was made by M.SUNDAR, J.)

This Full Bench has been constituted by Hon'ble Chief Justice in and by order dated 08.02.2022 made on the administrative side pursuant to an order dated 28.10.2021 made by an Hon'ble Single Judge in Application No.5445 of 2018 and O.A.Nos.539 and 540 of 2021 in O.P.No.599 of 2018, wherein Hon'ble Single Judge has doubted the jurisdiction of the Original Side to entertain and decide child custody disputes owing to the advent of the Family Courts Act, 1984.

2 Suffice to say that a Hon'ble Full Bench of this Court in and by order dated 06.10.1989 made in *Mary Thomas Vs. K.E.Thomas* reported in *AIR 1990 Mad 100* held that jurisdiction of Original Side is



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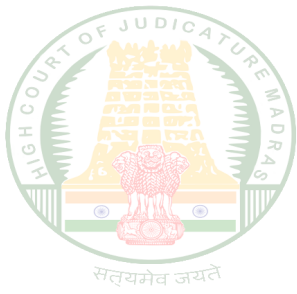
not denuded owing to the advent of Family Courts Act, 1984 more particularly Section 7 thereat.

3 Hon'ble Single Judge vide aforementioned order dated 28.10.2021 made in Application No.5445 of 2018 and O.A.Nos.539 and 540 of 2021 in O.P.No.599 of 2018 has formulated two questions for consideration by a Larger Bench and they are as follows:

'(i)Whether the jurisdiction of the High Court, on its Original Side, over matters of child custody and guardianship is ousted, in view of the provisions of Explanation (g) to Section 7(1) read with Sections 8 and 20 of the Family Courts Act, 1984? and

(ii)Whether the decision of a Full Bench of this Court in Mary Thomas Vs. Dr.K.E.Thomas (AIR 1990 Madras 100) is still good law?'

4 In the light of the narrative thus far, we are of the unanimous view that the aforementioned two reference questions pose a problem / difficulty. The difficulty is, *Mary Thomas* supra judgement has been rendered by another Hon'ble Full Bench, i.e., a Full Bench which is not only of co-equal strength but is also a Coordinate Bench. In this regard,

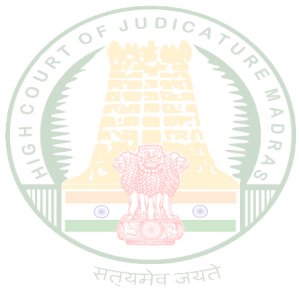


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ratio laid down in two case laws are of relevance.

5 The first case law is, ***Philip Jeyasingh Vs. The Joint Registrar of Co-operative Societies*** reported in ***1992-1-LW 216***, where a Full Bench of this Court held that a decision of Full Bench is binding on a subsequent Full Bench until it is overruled by a higher court or a larger Bench. The further ratio in *Philip Jeyasingh* case is, a decision of a Full Bench can be reconsidered only by a Larger Bench specially constituted by Hon'ble Chief Justice for deciding the question.

6 The second case law is *Grasim Industries Limited* case being ***Commissioner of Central Excise, Indore Vs. Grasim Industries Limited*** reported in ***(2016) 6 SCC 391***, wherein a three Member Bench of Honble Supreme Court had held that when two Coordinate Benches have taken diametrically opposite views, another Coordinate Bench should not venture into the issues raised and even attempt to express any opinion on the merits of either of the views. Hon'ble Supreme Court went on to hold that such a question should receive consideration of a Larger Bench.



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7 In *Grasim Industries Limited* while interpreting Sections 3

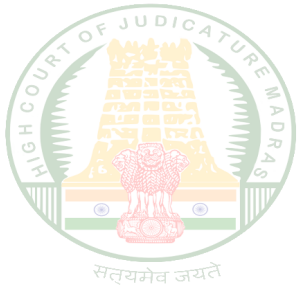
and 4 of the Central Excise Act, 1944, two Coordinate three member Benches had taken diametrically opposite views in *Union of India Vs. Bombay Tyre International Ltd.* reported in (1984) 1 SCC 467 and *CCE Vs. Acer India Ltd.* reported in (2004) 8 SCC 173. When *Grasim Industries Limited* was heard by another Three Member Bench, the matter was placed before Hon'ble Chief Justice of India for appropriate directions holding that the question should receive consideration of a Larger Bench.

8 In the light of the narrative thus far, Registry is directed to place this case file along with this proceedings of this Full Bench before Hon'ble Chief Justice and seek orders inter-alia about constitution of a Larger Bench.

(P.N.P., J.) (M.S., J.) (A.A.N., J.)

08.03.2022

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