

RAJASTHAN HIGH COURT

PremLataParihar

Vs.

R.L. Parihar

D.B. Civil Special Appeal No. 52 of 2001
(Rajesh Balia & O.P. Bishnoi, JJ.)

02.06.2004

JUDGMENT

Rajesh Balia, J.

1. Heard the learned counsel for the parties.
2. This appeal is directed against that judgment of the learned Single Judge dated 11th May, 2001 rendered in S.B. Civil Misc. Appeal No. 703/2000.
3. This appeal has arisen raising a question of jurisdiction of the District Judge to entertain the application/suit for injunction filed by the present appellant against her father and brothers. The appellant, who is unmarried daughter of respondent No. 1 R.L. Parihar and sister of respondent No. 2 Pratap Singh and respondent No. 3 Shiv Ram Singh, filed the application seeking injunction to restrain them for interfering in her right to reside in ancestral property held by the defendants-respondents. Though it was captioned as application under Section 3 read with Section 20(3), 23 and 18 of Hindu Adoption and Maintenance Act, 1956 (in short "the Act of 1956") the application, read as a whole, relates claim of the appellant to her right to reside in the ancestral property, for the time being, held by her father. Undoubtedly, she has referred to in her application that she has right to claim maintenance against her father under Sections 18, 23 and 20(3) of the Act of 1956, but has also specifically stated in Para 12 that she is capable of maintaining herself and she is not making this claim to enforce her right of maintenance. Therefore, one cannot be guided merely by the cause title of the application to decide the nature of relief claimed by the appellant, to decide whether it fell within the exclusive jurisdiction of the Family Court or was triable by ordinary Civil Court.

4. The refer (relief ?) claimed by the appellant is that non-petitioner Nos. 1, 2 and 3, namely; her father and two brothers should be restrained from evicting the appellant until she gets married from the ancestral house either by themselves or through their agents. The property in which right of residence as an unmarried female is claimed is stated to be ancestral, that is to say not the self-acquired house of her father.

5. The non-petitioners raised the objection about the maintainability of the application before the District Judge by referring to the provisions of Section 7 read with Section 8 of the Family Courts Act, 1984 (for brevity. hereinafter referred to as "the Act of 1984").

6. It was contended that since the appellant laid claim under Section 3 read with Sections 20(3), 23 and 18 of the Act of 1956, the application is exclusively triable by the Family Court as the subject matter falls within the province of Explanation (f) appended to Section 7 enumerating subject matters, which are triable by the Family Court and in view of Section 8 of the Act of 1984, the Family Court has exclusive jurisdiction to try the matters relating to subject matter enumerated in Section 7.

7. This objection was sustained by the learned District Judge. The learned District Judge placed reliance on Explanation (f) to sub-section (1) of Section 7 by treating the application to be one for maintenance under the Act of 1956 and he has also placed reliance on Section 20(3) of the Act of 1956 to hold that is the obligation of the father to maintain her unmarried daughter.

8. Aggrieved with the aforesaid order, the appellant preferred S.B. Civil Misc. Appeal No. 703/2000 before the learned Single Judge.

9. The learned Single Judge by the judgment under appeal affirmed the view of the learned District Judge holding that the right of residence is also included in the definition of 'maintenance' in Section 3 of the Act of 1956 and therefore, the claim raised by the appellant fell within the purview of the jurisdiction of Family Court under Section 7.

Hence, this appeal.

10. It has been contended by the appellant, who has appeared in person, that she has not raised any grievance about her claim of maintenance against her father, but she has demanded a right of residing in the ancestral property of the family of which she is member and her right as unmarried daughter or unmarried female is attached to the property and not to person. Therefore, the application did not fall within the purview

of an application for maintenance.

11. Learned counsel for the respondents, SriParihar, urged that since right of residence is a part of maintenance, therefore, the present application cannot be treated otherwise than for maintenance and therefore, no interference in the judgment is called for.

12. We have given our careful consideration to the rival contentions.

13. It is trite to say that the exclusion of jurisdiction of the ordinary Civil Court is not to be presumed easily, jurisdiction of Civil Court is excluded either by specific provision or by necessary implication.

14. Explanation to Section 7 of the Act of 1984 enumerates the subject matters in which a Family Court shall have jurisdiction. So far as clauses (a) to (e) of the Explanation to Section 7 are concerned, they relate to respective claims or right to relief arising from the marital relationship as they refer either to validity of marriage, or as to the matrimonial status of the parties to the application or legitimacy of his children.

15. However, clauses (f) and (g) have been couched in wider format. Clause (f) refers to a suit or proceedings for maintenance and clause (g) refers to a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor. As right of maintenance is not confined between the parties to a marriage, but extends to other persons also nor the question of custody of minor is restricted to parent, these two clauses cannot be restricted to the suit or proceeding arising between the parties to a marriage. Hence, this contention of the appellant that jurisdiction of Family Court in all circumstances confines to proceeding or suit between husband and wife and does not extend to a case where parties are not spouses or in the case of unmarried person cannot be accepted in such wide term. However, the question still arises whether the claim of the appellant in the present case falls within the four corners of suit or proceeding for maintenance.

16. This question cannot be decided by reference to provision of law in cause-title of the plaint or reference to the provisions which have been mentioned in the plaint, but has to be decided with reference to reading of the plaint as a whole and nature of pleas asserted or relief claimed by the appellant. If the asserted claim is related to claim of maintenance, the application would fall beyond the purview of jurisdiction of the Civil Court in view of the express mandate of Section 8 of the Act of 1984, if not, the Civil Court jurisdiction will not be ousted.

17. The jurisdiction of the District Court to entertain the claim the right of residence in ancestral house is being contested on the ground that her right to maintenance against her father includes right of residence also, hence triable by Family Court only to the exclusion of Civil Courts.

18. In raising this contention and accepting the same in abstract provision of law governing maintenance of a Hindu Female and the averments in that regard, both have been ignored.

19. Under Section 3 of the Hindu Adoption and Maintenance Act, 1956, maintenance includes provision for residence, but right of unmarried daughter or dependent to claim maintenance flows from different provisions. Section 18 of the Act of 1956 deals with right of a wife to be maintained by her husband. The appellant is not claiming a right under that provision. Nor right of wife to claim maintenance is limited with her earning or capability to maintain herself from her own earning.

20. Similar by Section 9 deals with maintenance of a widowed daughter-in-law. A father-in-law is obligated to maintain his widowed daughter-in-law to the extent she is unable to maintain herself out of her own property or earnings.

21. Section 20 provides that a Hindu is bound to maintain his or her legitimate children and his or her aged parents. It also provides *inter-alia* that right of an unmarried daughter to maintenance extends in so far as she is unable to maintain herself out of her own earning or her own property.

22. Thus, married daughter who earns enough to maintain herself, right to claim maintenance against her father is not recognized by law.

23. The appellant in her pleadings has clearly stated that she is earning enough to maintain herself, hence, she is not laying any claim to her maintenance against her father.

24. It may be noticed that claim to injunct is not confined to her father, but extends to her brothers who are alleged to be co-parceners. No claims of maintenance against her brothers under any provision of the Act of 1956 is recognized.

25. Her claim is directly referable to her right as an unmarried female member of a Hindu Family to reside in the ancestral property, independent of any claim to maintenance, as it is normally understood.

26. The distinction has also to be drawn between right of residence in joint family

property and while granting maintenance to include provision for residence, former is right attached with property, latter concerns criterion that must go in fixing the maintenance for any claimant which must also include provision for residence.

27. It is in the aforesaid context, we have perused the plaint and referred two specific averments mentioned in Paras 1, 12, and 13 of the plaint. The specific averments in Para 1 of the application and Paras 12 and 13 of the application leave no room of doubt that the appellant is not laying claim of maintenance against her father and brothers under the Act of 1956. In Para 12 of the application, she has laid her claim as her right to reside in the ancestral property of the family as a member of the family unobstructed by any other member of the family which constitutes the joint family in whom the property vests. Undoubtedly, the ownership of the property vests in the father as a karta or manager of the joint family and co-parceners have right in the property and have right to claim share in the property by demanding partition. The female member of the family does not enjoy such right in the property. But apart from the claim of an unmarried daughter to maintenance against her father, which includes the provision for residence, the female members of the joint Hindu family have indefeasible right to reside except when the property is alienated for legal necessity. In other case, she may enforce her right of residence even against transferees, who cannot defeat the same, though the transferor Karta of Hindu Undivided Family may not be able to claim such right.

28. Attention may be invited to Section 23 of Hindu Succession Act, 1956, which recognises an unmarried daughter's right to reside in the dwelling house of family even after the death of her father as a female heir of class one, *prima facie* such right exists during life time of father also. Even under Shastric Hindu Law in certain circumstances right of an unmarried daughter to reside in the house has been acknowledged as right attached to property, which can be defeated only by a *bona fide* purchaser for value without notice.

29. Thus, the right claimed by the appellant in the present case is directly referable to her claim as right to reside in the ancestral family house unobstructed by other members of the family. She has a right to protect her right to reside in dwelling house, where she is residing even against transferee, her right cannot be ordinarily defeated if the property continued to be in the hands of family.

30. Whether she is able to sustain the right in the proceeding is not the question, which is germane for consideration at this stage.

31. In view of the aforesaid, we are of the opinion that a right of residing in the ancestral property of the family of Hindu undivided family of which unmarried daughter claims to be a member is binding against the estate and can be defeated only in the circumstances known to law. Such an independent right, in our opinion, does not fall in the purview of Section 7. There is no obstruction in the jurisdiction of the Civil Court adjudicating upon such right independent of a claim to maintenance against father.

32. Apparently, two courts below have decided the issue on assuming that the appellant has claimed right to reside against her father as part of her claim to maintenance against her father, which in our opinion, is not justified from reading of the plaint application.

33. A brother is not the person who is recognized as a person against whom a sister can claim maintenance under Hindu Adoption and Maintenance Act. Moreover, we are informed by respondents that appellant has filed a suit for partition in ancestral properties, which is pending. If that be so, the suit for partition is triable by Civil Court only. The relief claimed by the appellant can also be claimed in aid of said suit by way of injunction against other members restraining them from evicting her from the portion of property in her possession. Such a claim will obviously not fall within the purview of Sections 7 and 8 of the Act of 1984. If without claiming for partition of property to which appellant lays a claim, she wants to protect her possession of that part of property where she is residing, there does not appear to be any impediment in Civil Court entertaining such claim.

34. Accordingly, the appeal is allowed. The judgment under appeal as well as the judgment of the District Judge are set aside and it is held that the District Judge in the present case has jurisdiction to decide the issue about the right claimed by the appellant as an unmarried female to reside in the ancestral property of the joint Hindu Family of which she claims to be member. The District Judge is directed to decide the application as well as the suit as expeditiously as possible.

35. Before parting with this case, we make it clear that we may not be taken to have expressed any opinion on the merit of the claim made by the appellant.

36. The record of the case may be returned to the trial court forthwith.

Appeal allowed.