

# Jurisdiction of Family Court

Presented by

*Yogesh Kumar Gupta*

*District and Sessions Judge*

*Tehri Garhwal*

# THE FAMILY COURTS ACT, 1984

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.

# The Protection of Women from Domestic Violence Act, 2005

## **26. Relief in other suits and legal proceedings.—**

(1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

In the case of [\*Sudhannya K.N. vs. Umasanker Valsan\*](#) (2013), the Kerala High Court discussed the scope of DV Act and held that the scope of DV Act is wide as it guarantees rights to women to approach either magistrate or family court for filing suit according to her comfort zone. The court also held that the family court has the power to pass the interim protection orders as well as interim residence orders under Section 26 of the DV Act.

However, Section 26 is not used adequately because the powers of the family court are not properly described as in the matters related to domestic violence and also the family courts are not clear about their jurisdiction under Section 26 of the DV Act. Due to this, most of the victims approach the Magistrate instead of the family courts.

# The Muslim women (Protection of Rights on Divorce) Act, 1986

3. Mahr or other properties of Muslim woman to be given to her at the time of divorce.-

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;

(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;

(c) an amount equal to the sum of mahr or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and

(d) all the properties given to her before or at the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

CM(M) 69/2020 & CM APPL. 2707/2020

**AVNEET KAUR Vs SADHU SINGH & ANR .**

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

Whether the family court has jurisdiction to entertain a suit between mother-in-law and daughter-in-law?

**Unquestionably, the dispute in this case revolves around Clause (d) of explanation to Section 7 (1) of the Family Courts Act. A mere glance at the provision indicates that it has been worded in careful and cautious terms. It states that a suit or proceeding for an order or injunction in circumstances arising out of a marital relationship would lie exclusively before the Family Court.**

## **Balram Yadav Vs. Fulmaniya Yadav**

**[Civil Appeal No.4500 of 2016 arising out of SLP (C) No. 8076 of 2015]**

KURIAN, J.

Leave granted.

1. The appellant instituted a Civil Suit before the Family Court, Ambikapur, Sarguja, Chhattisgarh seeking a declaration to the effect that respondent is not his legally married wife. By judgment dated 28.12.2013, the Civil Suit was decreed declaring that the respondent was not appellant's legally married wife.

2. The respondent, being aggrieved, moved the High Court of Chhattisgarh. The High court, as per the impugned order dated 14.01.2015, allowed the appeal holding that the Family Court lacked jurisdiction to deal with the matter. According to the High Court, a negative declaration was outside the jurisdiction of the Family Court.

3. Heard the learned counsel for the parties.

4. Section 7 of the Family Courts Act, 1984(for short "the Act") deals with the jurisdiction of the Family Courts, which reads as follows:-

"Jurisdiction.-

Continue

6. Section 20 of the Family Courts Act, 1984 provides for overriding effect of the Act on other laws or instruments having the effect of law. The said Section reads as follows:- "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."

7. Under Section 7(1) Explanation (b), a Suit or 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, since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the Civil Courts. In case, there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or a negative relief. What is important is the declaration regarding the matrimonial status. Section 20 also endorses the view which we have taken, since the Family Courts Act, 1984, has an overriding effect on other laws.

8. In view of the above, the appeal is allowed. The impugned judgment of the High Court is set aside. The matter is remitted to the High Court to be decided on merits. We request the High Court to hear the appeal afresh and dispose it of expeditiously, preferably within a period of six months.

Before :- R. Banumathi and Indira Banerjee, JJ.

Criminal Appeal No.192 of 2011. D/d. 18.6.2020.

Rana Nahid @ Reshma @ Sana & Anr. - Appellants

3. The Family Court held that as the appellant No.1 is a Muslim divorced woman, her petition for maintenance under Section 125 Cr.P.C. , 1973 is not maintainable. The Family Court treated the said application under Section 125 Cr.P.C. , 1973 as application under section 3 of the Muslim Women (Protection Of Rights On Divorce) Act, 1986 (Muslim Women's Protection Act) in the light of the judgment of this Court in Iqbal Bano v. State of Uttar Pradesh & Anr. (2007) 6 SCC 785. The Family Court ordered respondent-Sahidul Haq to pay rupees three lakh in lump sum to appellant No.1 towards her maintenance and future livelihood. The application of appellant No.2 claiming maintenance has been accepted under Section 125 Cr.P.C. , 1973 and the respondent has been ordered to pay L 2,000/- per month towards his maintenance till he attains majority.

9. Under the Muslim personal law, a divorced woman could be awarded maintenance only during the iddat period and not later. In *Mohd. Ahmed Khan v. Shah Bano Begum and others* (1985) 2 SCC 556, the Supreme Court upheld the right of Muslim divorced wife under Section 125 Cr.P.C. , 1973 because Explanation (b) of Section 125 (1) Cr.P.C., 1973 includes a divorced wife till she remarries. In *Shah Bano* case, the Supreme Court has held that a Muslim divorced woman unable to maintain herself is entitled to claim maintenance under Section 125 Cr.P.C. , 1973 even after the iddat period was over.

10. After *Shah Bano* case, the Muslim Women (Protection of Rights on Divorce) Act (For short `Muslim Women Protection Act') was enacted with effect from 19.05.1986 as per which a divorced Muslim woman is not only entitled to maintenance for the iddat period from her former husband but also to a reasonable and fair provision for the future. The preamble of the **Muslim Women (Protection of Rights on Divorce) Act, 1986** reads as under:-

9. Sub-clause (2) of Section 7 of the Family Court Act is also of no help to the respondent since the Act confers only a limited jurisdiction relating to those matters only as are covered by Chapter IX of the Criminal P.C. Only this limited jurisdiction has been transferred to the Family Court. To this extent alone, the first Class Magistrate having jurisdiction in the area for which Family Court has been established loses his jurisdiction which is thence forth exercisable by the Family Court only.

10. Thus, we have seen that neither under sub-section (1) nor under sub-section (2) of Section 7 the Family Court's Act has any jurisdiction to entertain an application of the nature contemplated by Section 3 of the 1986 Act.

Indira Banerjee, J. - 27. I have gone through the judgment prepared by my esteemed sister, but I have not been able to persuade myself to agree that a Family Court constituted under the **Family Courts Act, 1984**, lacks jurisdiction to convert an application for maintenance filed by a Muslim woman under section **125 of the Code of Criminal Procedure**, 1973 (hereinafter referred to as "Cr.P.C") to an application under section 3 of the Muslim Women (Protection Of Rights On Divorce) Act, 1986, (hereinafter referred to as the "1986 Act for Muslim Women"), and decide the same.

# C. Raja Vs. M. Sridevi Madras High Court

Judgment dated 19-04-2023

## When a husband purchases property in the name of Wife

defendants 1, 2 and 3 respectively and the prayer regarding sale deed dated 19.01.1994 by setting aside the same as null and void came to be made on the assumption that the second appellant/Dharmalingam alone was the purchaser under the said sale transaction. However, during the pendency of the suit, the plaint was amended to the effect that the conveyance made under the sale deed dated 19.01.1994 by the first appellant was in favour of the second appellant as well as the third appellant ( Dhanasingh) and the said Dhanasingh was impleaded as a defendant in the suit and ranked as fourth defendant. The above said reliefs were claimed by the respondent/plaintiff on the basis of the plaint averments that it was he who purchased the property with his own funds in the name of his wife out of pure love and affection towards her and with the intention of providing a security for his wife and minor son and that hence the prohibition contained in Section 4 of the Benami Transaction (Prohibition) Act, 1988 would not get attracted to his case.

ii) In Section 4 itself, certain exemptions are provided. Such exemptions protect the interest of the members of the Hindu Undivided Family and the person claiming to be a beneficiary for whose benefit the property is held by another person as trustee in a fiduciary capacity. The definition clause in section 3(2)(a) excluding the transaction from benami transaction found cannot be read into section 4. Then the further questions that arise are: 1) who shall be competent to rebut the

"But, it has to be made clear that when a suit is filed or defence is taken in respect of such benami transaction involving purchase of property by any person in the name of his wife or unmarried daughter, he cannot succeed in such suit on defence unless he proves that the property although purchased in the name of his wife or unmarried daughter, the same had not been purchased for the benefit of either the wife or the unmarried daughter, as the case may be, because of the statutory presumption contained in sub-section (2) of Section 3 that unless a contrary is proved that the purchase of property by the person in the name of his wife or his unmarried daughter, as the case may be, was for her benefit.

Therefore, our answer to the question under consideration is that neither the filing of a suit nor taking of a defence in respect of either the present or past benami transaction involving the purchase of property by a person in the name of his wife of unmarried daughter is prohibited under sub-sections (1) and (2) of Section 4 of the Act."

**Thank you**