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AIR 2016 SUPREME COURT 2161
SUPREME COURT
 (From : Chhattisgarh)

KURIAN JOSEPH, J. and R. F. NARIMAN, J.

Civil Appeal No. 4500 of 2016 (arising out of SLP (C) No. 8076 of 2015), **D/-27-4-2016**

Balram Yadavv.Fulamaniya Yada

Family Courts Act (66 of 1984),S.7,S.8,S.20- Civil P.C. (5 of 1908),S.9- Jurisdiction of Family Court - Declaration regarding matrimonial status of any person - Has to be sought only before Family Court and not before Civil Court - It be affirmative declaration or negative declaration - Wrong to say that negative declaration is not within jurisdiction of Family Court.

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 said view, since the Family Courts Act, 1984, has an overriding effect on other laws.

Order D/- 14-01-2015 (Chhattisgarh), Reversed.

(Para7)

Judgement

1.KURIAN, J. :-Leave granted.

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.-(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;

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- (d) a suit or proceeding for an order or injunction in circumstances 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."

5. Section 8 of the Act deals with the exclusion of jurisdiction, which reads as follows:-

"8. Exclusion of jurisdiction and pending proceedings.-Where a Family Court has been established for any area,- .-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 power 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 or by 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."

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

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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.

No costs.

Appeal Allowed.
