

L.MOHAPATRA, J & B.K.MISRA, J.

W.P.(C) NO.2301 OF 2011 (Decided on 28.07.2011)

DR. MADHUSUDAN BALIARSINGH

.....Petitioner.

. Vrs.

SASMITA BALIARSINGH

... ..Opp.Party.

FAMILY COURTS, ACT, 1984 (ACT NO.66 OF 1984) – Ss.7,8.

For Petitioner - M/s. Dayananda Mohapatra, M.Mohapatra,
G.R.Mohapatra, S.P.Nath & L.K.Nanda.
For Opp.Party - M/s. R.C.Sarangi, S.S.Mohanty, M.K.Pattanaik,
S.Jena, A.K.Mohanty.

L.MOHAPATRA, J. In this writ application an important question of law relating to jurisdiction of the Family Courts established under the Family Courts Act, 1984 is raised.

2. The background of the case is that the petitioner had filed Mat. Case No.468 of 2002 before the learned Civil Judge (Senior Division), Bhubaneswar praying for dissolution of marriage and a decree of divorce under Section 13 (1) (ia) of the Hindu Marriage Act. The suit was dismissed by the learned Civil Judge by judgment and decree dated 18.6.2008 and 14.7.2008 respectively. The petitioner thereafter preferred an appeal by Matrimonial Appeal No.5 of 2008 against the said judgment and decree of the learned Civil Judge. The learned District Judge, Khurda at Bhubaneswar allowed the appeal on 21.1.2010. After the said judgment was delivered by the learned District Judge, a petition was filed by the opposite party under Order 41, Rule 21 read with Section 151 of the Code of Civil Procedure to set aside the said judgment and decree passed in appeal and praying for rehearing of the appeal on merit. The learned District Judge by order dated 26.8.2010 allowed the application on payment of cost and posted the case to 30.9.2010. Thereafter by order dated 21.12.2010, the learned District Judge transferred the appeal to the Court of the learned Judge, Family Court, Bhubaneswar which was established during the pendency of the appeal. Challenging the said order of the learned District Judge transferring the case to the Court of the learned Judge, Family Court, Bhubaneswar, this writ application has been filed.

3. Section 7 of the Family Courts Act, 1984 prescribes jurisdiction of the Family Courts. Section 8 deals with exclusion of jurisdiction in relation to suits and proceedings. Section 8 (a) provides that where a Family Court has been established for any area, 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. Explanation to sub-section (1) of Section 7 describes the nature of suits and proceedings to be decided by Family Courts. The nature of suits are described in (a) to (g) of the said Explanation attached to sub-section (1) to Section 7. On perusal of the entire provision

contained in Section 7, it appears that the same relates to a suit or a proceeding. The word 'proceeding' has not been defined in the Act. With reference to these two sections of the Family Courts Act, 1984, this Court is now called upon to decide as to whether an appeal pending before the learned District Judge against a decree passed by the civil court in a case where prayer for dissolution of marriage has been turned down can be transferred to a Family Court which was established during pendency of the appeal before the District Judge. The learned counsel appearing for the parties, therefore, made two submissions relevant for the purpose of the case.

(1) The term 'proceeding' appearing in Sections 7 and 8, whether shall include an appeal or not ?

(2) In absence of any provision in the Family Courts Act, 1984 whether the Judge, Family Court can exercise appellate jurisdiction ?

A decision of the Supreme Court in the case of **Sri Vishnu Awatar etc. etc. v. Shiv Autar and others**, reported in **AIR 1980 S.C. 1575** was cited at the bar. While dealing with the case in relation to Section 3 of the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978, the Supreme Court observed that the words "or other proceedings" in the phrase "cases arising out of original suits or other proceedings" refer to proceedings of final nature. These words have been added, in order to bring within the purview of the revisional jurisdiction, orders passed in proceedings of an original nature, which are not of the nature of suits, like arbitration proceedings. This phrase cannot include decisions of appeals or revisions, because then the legislature will be deemed to have contradicted itself. The words "or other proceedings" have to be read ejusdem generis with the words "original suits". They will not include appeals or revisions. Another decision of the Supreme Court in the case of **Mathew M. Thomas and others v. Commissioner of Income-tax**, reported in **AIR 1999 S.C. 999** laid down that the word 'proceedings' shall include proceedings at the appellate stage. Reference was made by the Supreme Court to an earlier decision in the case of **Garikapati Veeraya v. N. Subiah Choudhry**, reported in **AIR 1957 SC 540**, where the Court held that legal pursuit of a remedy, suit appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

4. Before we proceed to decide the question, we would like to refer to the objects and reasons behind enacting this law. As it appears from the Family Courts Bill, the immediate background to the need for legislation for setting up of Family Courts is the mounting pressures from several associations of women, other welfare organizations and individuals for establishment of Family Courts with a view to providing quicker settlement to the family disputes where emphasis should be laid on conciliation and achieving socially desirable results. A good deal of time of the civil courts is taken by small family disputes which could be more expeditiously and at much lesser cost can be settled by Family Courts which should adopt an entirely new approach by avoiding rigid rules of procedure and evidence. The Bill also sought to exclusively provide within the jurisdiction of the Family Courts the matters relating to matrimonial relief as indicated in sub-section (1) of Section 7 of the Act. It appears that it not only refers to suits but also other proceedings in relation to the suit but does not provide for inclusion of appeals. Had it been the intention of the legislature to empower the Family Courts to exercise

appellate jurisdiction, in cases where such matters have been disposed of by a competent civil court in absence of a Family Court, Section 19 which provides for appeal would have made it very clear. Sub-section (1) of Section 19 clearly provides that save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 or in the Code of Criminal Procedure, 1973, or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law. There is nothing in Section 19 of the Act empowering the Family Court to hear an appeal. We are, therefore, of the view that the term 'proceeding' appearing in Sections 7 and 8 does not include an appeal or revision. It only relates to other proceedings arising out of or in connection with the suit pending before the learned Judge, Family Court. The decision in the case of Mathew M. Thomas and others v. Commissioner of Income-tax relates to a proceeding under the Compulsory Acquisition of Immovable Properties wherein the Court referred to the Income Tax Act, 1961 and C.B.D.T. Circular No.455 dated 16.9.1986. While interpreting the Circular and Section 269-I and 269-C of the Income-tax Act, the Court came to such a conclusion.

5. In view of the discussions made above, we are of the view that the Family Court cannot exercise the appellate jurisdiction and therefore, the learned District Judge, Khurda at Bhubaneswar could not have transferred the appeal pending before him to the learned Judge, Family Court, Bhubaneswar for adjudication taking recourse to Section 8 of the Family Courts Act, 1984. The order dated 21.12.2010 passed by the learned District Judge, Khurda impugned in this writ application is set aside.

6. Since we have held that the Family Court cannot exercise appellate jurisdiction, the learned District Judge, Khurda is directed to find out in how many cases such orders have been passed and all those orders be recalled and the appeals be retransferred to the Court of the District Judge for disposal in accordance with law.

7. With the above observation and direction, this writ application is disposed of.

Writ petition disposed of.