

**In The Court of Smt. Priyanka Saikia, Munsiff No. 2,  
Sonitpur, Tezpur**

**Case No: T.S. 129/2017**

**Sri Tika Ram Nepal –vs- Smt. Ambika Devi**

**16.11.2022**

Both sides are represented.

Today the date is fixed for order.

I have already heard the learned counsels appearing on behalf of the plaintiff and the defendant.

The defendant inter alia have pleaded that this Court has no jurisdiction to try the instant suit as the subject matter is beyond the cognizance of Civil Court. The defendant has specifically pleaded that the matter in dispute is within the jurisdiction of the Family Court. The defendant has also pleaded that no suit lies to this Court relating to marital status of the parties and therefore the suit is barred under Section 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"). To prove his claim, the learned counsel for the defendant has relied on the judgment **Balram Yadav v. Fulmaniya Yadav, (2016) 13 SCC 308**.

On the other hand, the counsel for the plaintiff stated that plaintiff is already a married man and no marriage ceremony was solemnized between plaintiff and defendant. Further plaintiff has pleaded that the instant suit attracted Sec.34 of the Specific Relief Act and the Civil court only has jurisdiction to try the suit for such declaration as claimed by plaintiff. The counsel for the Plaintiff has also relied on

judgment passed in cases **Balram Yadav v. Fulmaniya Yadav reported in (2016) 13 SCC 308, Doly Ghosh v. Kumud Chandra Ghosh reported in 2004 Legal Eagle (Cal) 474 and Chayanabegum Barbhyan & Anr. V. Salim Uddin Lasker reported in 2020 (3) GLT 520.**

Order XIV Rule 2(2) of CPC empowers the Court to try the issue of jurisdiction as a preliminary issue being a pure question of law. Until such adjudication of the preliminary issue is over, the settlement of other issues in the suit may be postponed. Accordingly, the following issue is framed as a preliminary issue so as to ascertain whether this Court has jurisdiction to try and adjudicate the instant suit:

“Whether this Court has jurisdiction to try this suit?”

For a ready reference, the provisions of Section 8 read with Section 7(1) of the Family Courts Act which exclude the jurisdiction of the Civil Court are reproduced herein below:

“8. Exclusion of jurisdiction and pending proceedings.—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 subsection;

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers 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.

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, 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 of proceeding for an order or injunction in circumstances arising out of a marital relationship;

(e) a suit of proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit of proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.”

From a conjoint perusal of Section 7(1) and Section 8 of the Family Courts Act as reproduced hereinbefore, it is apparent that a Civil Court has no jurisdiction try a suit for a declaration as to the validity of a marriage.

In the present case, the plaintiff in para 10(a) of the plaint inter-alia sought for a declaration that defendant is not his legally married wife. The plaintiff thus sought for a declaration of the matrimonial status of the defendant. Even though, the plaintiff sought for other reliefs in the suit. But, on facts of the case and given the written statement of the defendant, in my opinion, the relief of declaration sought for by the plaintiff as to the matrimonial status of defendant is the substantial relief in the suit inasmuch as other reliefs are dependent on it.

In the above context, I may gainfully refer to the case which is relied by both plaintiff and defendant, in the case of **Balram Yadav v. Fulmaniya Yadav**, reported in **(2016) 13 SCC 308**, where the Hon'ble Supreme Court held as follows:

"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.”

Defendant also pleaded in her written statement that suit filed by the plaintiff under Sec.34 of Specific Relief Act is not maintainable. The plaintiff on the other hand denied having solemnized any marriage at all with the defendant at any time and as such the provision of Sec.34 of the Specific Relief Act is attracted and Civil Court only has jurisdiction to try the suit for such declaration as claimed by the plaintiff that the defendant is not the legally married wife of plaintiff.

Let us now discuss whether the suit filed by plaintiff is maintainable under Sec.34 of the Specific Relief Act.

According to Sec. 34 of the Specific Relief Act, no suit is maintainable under this Section, unless the plaintiff is a person entitled to some legal character or to some right as to property, and the declaration sought is that he is entitled to such legal character or to such right. A suit which is not for a declaration of plaintiff's right to property or to his legal character, but is suit to challenge the defendant's pretension to a legal character or right to property is outside the scope of this provision. In case of family relationship under the provision of Specific Relief Act, a suit for declaration that the marriage between the parties to the suit is dissolved is maintainable when the defendant is interested to deny the legal character claimed by the plaintiff.

But, in the instant case, provision of Sec.34 of the Specific Relief Act is not attracted, on the ground that the plaintiff and the defendant both being Hindu by religion, the provision of Hindu Marriage Act, 1955 only will apply in any matter relating to the validity of the marriage.

Now the Sec.19 of Hindu Marriage Act stated that Court to which petition shall be presented. "Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

- (i) the marriage was solemnised, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or
- (iiia) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.

Therefore, the suit is not maintainable under Sec.34 of the Specific Relief Act, hence this court has no jurisdiction to try the suit. Since this suit is for the purpose of deciding the validity of a marriage governed by the Hindu Marriage Act, 1955, both the parties to the marriage

being Hindu by religion, this suit is to be filed in the court of District Judge only.

Having thus considered the factual and legal aspect of the matter, I am of the firm opinion that this Court has no jurisdiction to try the instant suit where the primary dispute relates to the matrimonial status of the defendant.

In the result, the preliminary issue is decided in the affirmative.

The instant suit is accordingly dismissed for want of jurisdiction.

The suit shall stand disposed of accordingly.

The parties are left to bear their own costs.