



IN THE HIGH COURT OF ORISSA AT CUTTACK
RSA No. 482 of 2023

In the matter of an appeal under Section 100 r/w order XLII Rule 1 of the Code of Civil Procedure, 1908.

Sanjukta Mukhi **Appellant**

-Versus-

Gitanjali Mukhi & Ors. **Respondents**

Advocate(s) appeared in this case :-

For Appellant: Mr. C. Samantaray,
Advocate

For Respondent: Mr. J.K. Khuntia,
Advocate

CORAM
JUSTICE SASHIKANTA MISHRA

JUDGMENT
16th May, 2025

SASHIKANTA MISHRA, J. This is an appeal filed by defendant No.1 against a confirming judgment.

2. The judgment passed by the learned District Judge, Kandhamal on 23.08.2023 followed by decree in RFA No.18 of 2022 on 01.09.2023 is



under challenge whereby, the judgment passed by learned Civil Judge, Senior Division, Phulbani in C.S. No.24/2018 followed by decree, was confirmed.

2. For convenience, the parties are referred to as per their respective status before the trial Court.

3. In view of the order proposed to be passed, it is not felt necessary to relate the facts of the case in detail. It would suffice to only mention that the suit in question was filed by the plaintiff seeking a declaration that she is the only legally married wife of Keshab Mukhi with negative declaration that defendant No.1 is not the legally wedded wife of Keshab Mukhi with further prayer to direct defendant No.3 to disburse all the pensionary benefits in her favour. Be it noted that said Keshab Mukhi died on 02.01.2017, leaving behind the plaintiff. It is alleged that Keshab Mukhi was never married to defendant No.1 and as such she is not entitled to family pension. The plaintiff claimed to



be the first wife of Keshab Mukhi. She also contended that the defendant No.1 is not the legally wedded wife of Keshab Mukhi. She received regular maintenance of an amount of Rs.200/- by judgment passed in her favour in M.C. No.7/1994. When she applied for a legal heir certificate to avail the benefits of her late husband, she discovered that the defendant no.1 was claiming to be the legally married wife of her late husband and had been issued with the legal heir certificate. Subsequently, she was declared as the legally married wife of late Keshab Mukhi by Tahasildar, Phiringia on 25.07.2017, vide M.C. No.22/2017, cancelling his previous order dated 12.04.2017 and directed the defendant no.1 to surrender her legal heir certificate. She filed the suit claiming the aforementioned reliefs as defendant No.1 had applied for legal heir certificate.

4. The defendants have jointly filed their written statement denying the averments made in the plaint,



claiming that there was no valid marriage between the plaintiff and Keshab Mukhi. The claim of the plaintiff of receiving maintenance of Rs.200/- was also denied as baseless. The defendants further claimed that the deceased, Keshab Mukhi lived happily with them which the plaintiff knew.

5. The trial Court framed four issues and after analysing the oral and documentary evidence in light of Section-34 of the Specific Relief Act, 1963, dismissed the suit.

6. The plaintiff carried the matter in appeal. The First Appellate Court took up maintainability of the suit in the civil court for consideration as the only point. Relevant provisions of the Family Courts Act namely Sections-7 and 8, were referred to along with some judgments and concluded that the suit could not have been instituted in a civil court and was not maintainable in the said Court. Despite having held so, the First Appellate Court further held that the conclusion of the trial court, though



flowing from other considerations, cannot be disturbed. The appeal was thus, dismissed.

7. Being aggrieved, the plaintiff has filed the instant Second Appeal which was admitted on the following substantial question of law:-

(i) Whether both the Courts below were correct in entertaining the suit and the appeal arising therefrom in view of Section 7 of the Family Courts Act read with Section 8 of C.P.C?

8. Heard Mr.C. Samantaray, learned counsel for the plaintiff-appellant and Mr. J.K. Khuntia, learned counsel for defendant-respondents.

9. Mr. Samantaray assails the impugned judgments on the ground that a Family Court having been established for the district of Phulbani, the Courts below lacked jurisdiction to entertain and adjudicate the dispute. Mr. Samantaray further submits that the prayer of the plaintiff as laid in the plaint squarely falls within the jurisdiction of the Family Court as per Section-8 of Family Courts Act. Since the Family



Court was established at Phulbani before filing of the suit, the trial Court, or for that matter the First Appellate Court, lacked jurisdiction to continue with the suit/appeal in view of the express bar under Section-8 of the Family Courts Act.

10. Mr. Khuntia, learned counsel appearing for the defendants would submit that defendant no.1 claimed declaration as regards her status vis-a-vis that of plaintiff and on such basis claimed a further direction for grant of all pensionary benefits in her favour. This, according to Mr. Khuntia, is therefore, a purely civil dispute over which the civil Courts alone have jurisdiction. He however, fairly submits that the declaration sought for by the plaintiff was with regard to her marital status as also that of the defendant No.1.

11. Reference to the plaint filed in the suit reveals that the following relief was claimed.



*“The appeal be admitted; records be called for from the learned Courts below; notice be issued to the respondents and after hearing the parties the judgment dated 23.08.2023 passed by learned District Judge, Kandhamal, Phulbani and decree drawn thereto on dated 01.09.2023 in R.F.A No. 18 of 2022 and the judgment dated 15.11.2022 passed by learned Senior Civil Judge, Phulbani in Civil Suit No. 24 of 2018, be set-aside and the suit be decreed throughout with cost;
And, for this act of kindness the appellant as in duty bound shall ever pray.”*

8. It is not disputed that the State Government in consultation with this Court established the Family Court in the district of Kandhamal with headquarters at Phulbani by notification dated 10.10.2012. Said notification is reproduced below for immediate reference:

**GOVERNMENT OF ODISHA
LAW DEPARTMENT**

Bhubaneswar, dated the 10th of October 2012

NOTIFICATION

No-IJ-72/2012-11278/L. In exercise of the powers conferred by clause(b) of sub-section(1) read with sub-section(2) of section 3 of the Family Courts Act, 1984 (66 of 1984), the State Government after consultation with the High Court of Orissa do hereby



establish a Family Court in the district of Kandhamal with headquarters at Phulbani with effect from the date the said Court functions with Local limits of jurisdiction co-extensive with the Revenue District of Kandhamal.

By order of the Governor

By letter dated 02.08.2013, this Court fixed 12.08.2013 as the date and time for opening of the Family Court at Phulbani. Said letter is reproduced hereinbelow:

HIGH COURT OF ORISSA: CUTTACK

No.6751

XVIII-06/1983

FROM

*SHRI S.K. DEHURY
SPECIAL OFFICER (ADMN,)*

TO

*THE DISTRICT & SESSIONS JUDGE,
KANDHAMAL AT-PHULBANI.*

Cuttack dated the 2nd August 2013

Sub:-Opening of the Court of Judge, Family Court at Phulbani on 12.08.2013.

Sir,

I am directed to say that the Court is pleased to fix 12.08.2013 to be the date for opening of the Court of Judge, Family Court, Phulbani.

I am, therefore, to request you to make all necessary arrangement for



furnishing Court Hall and the Chamber of Presiding Officer including posting of Class-II & IV Staff and to transfer case records arising out of Revenue District of Kandhamal and cognizable by family Court under family Courts Act, 1984 to the newly created Family Court at Phulbani well in advance of the date fixed for smooth functioning of the said Court at Phulbani on the scheduled date.

*Yours Faithfully,
Special Officer (Admn.)*

9. The suit was filed in 2018 as evident from the order sheet of the trial Court. So, as on the date of filing of the suit, the Family Court at Phulbani had been established and had become functional. It now, needs to be examined as to if the relief claimed in the suit is a matter within the exclusive jurisdiction of the Family Court or not.

10. Section 7 under Chapter-III, of the Family Courts Act, 1984 relates to jurisdiction and reads as follows:-

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 subsection 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.



(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.

It is evident that the suit being one for a declaration as to the validity of marriage between the plaintiff and Keshab Mukhi as also for negative declaration regarding the marital status of defendant No.1 vis-a-vis Keshab Mukhi, the dispute squarely falls within the purview of Clause-(b). The other relief claimed, that is, for direction for disbursal of pensionary benefits, is obviously consequential being entirely dependent upon the main relief claimed. Thus, the matter which ought to have been dealt with by the Family Court after its establishment and functioning was entertained by the Civil Court. At the stage, it would be useful to refer to Section



8, which is quoted hereinbelow;

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 sub-section;

(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 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.



Clause-(a) of the provision quoted above clearly bars the jurisdiction of the Civil Court in respect of any matter in any suit or proceeding of the nature referred to in the explanation to that subsection. Clause-(c) makes it clear that any suit or proceeding of the nature referred to in explanation to Subsection (1) of Section 7, which is pending immediately before the establishment of the Family Court, before any district Court or subordinate Court over which a Family Court alone has jurisdiction on the date on which it is established, shall stand transferred to the Family Court.

11. As already stated, the Family Court at Phulbani started functioning w.e.f. 12.08.2013. Therefore, in view of Clause (a) of Section 8, the Court of Civil Judge, Senior Division at Phulbani lacked jurisdiction to adjudicate upon the matter any further. Further, as per the provision under Clause-(c), the suit ought to have been transferred to the Family Court. In the case of



Balaram Yadav vrs. Fulmaniya Yadav¹ it was held that 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. Further, it makes no difference as to whether the relief claimed is affirmative or negative. What is important is the declaration regarding the matrimonial status.

12. It is surprising that even after establishment and functioning of the Family Court, the trial Court not only proceeded with the suit but also decided it finally. The First Appellate Court however, referring to the aforementioned relevant provisions of the Family Courts Act as well as the judgment in **Balaram Yadav (Supra.)**, held that the suit was not maintainable but confirmed the decree of the trial court as the same was rendered on other considerations. In the considered view of this court, having held as above, the First Appellate

¹ 2016 (II) OLR (SC) 125



Court should have set aside the decree of the trial court and directed it to transfer the suit to the Family Court for adjudication.

13. It is true that the question as to jurisdiction of the courts vis-à-vis the Family Courts Act was never raised before the trial Court but then, the same is immaterial in view of the fact that the question of jurisdiction goes to the root of the matter and the judgment passed by the Court lacking jurisdiction is obviously a nullity. Moreover, in view of the exclusion of the jurisdiction of the Civil Court as per Section 9 of the CPC, the suit and the appeal arising therefrom could not have been entertained and decided by the Courts below. It is reiterated that the Civil Court shall have no jurisdiction to entertain a suit where the same is expressly barred under any law. In the instant case, the jurisdiction of the Civil Court to adjudicate the dispute is expressly barred by the provisions of Sections 7 and 8 of the Family Courts Act.



14. From a conspectus of the analysis made hereinbefore, this Court finds that the trial Court committed manifest error and illegality in entertaining the suit as also in not transferring the suit to the Family Court. This Court also holds that the First Appellate Court committed illegality in not directing the trial court to transfer the suit to the Family court despite holding the same as not maintainable before the civil court.

15. In the result, the appeal succeeds and is therefore, allowed. The impugned judgments and decrees passed by both the Courts below are hereby set aside. The trial Court is directed to immediately transmit the records to the Family Court at Phulbani for hearing of the matter afresh. In doing so, the Family Court shall not be influenced by the judgments passed by the trial Court as well as the First Appellate Court in any manner. Further, the suit being of the year 2018, the Family Court shall endeavour to dispose of the



same as expeditiously as possible, preferably, within eight months from the date of receipt of records.

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(Sashikanta Mishra)
Judge

B.C. Tudu, Sr. Steno