

Part 9

R.Agnes Bellarmina v. M.Anbunathan
(Madurai Bench) (S.M.Subramaniam, J.)

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11. A reading of the above provision of law would show that the claim of the plaintiff is unsustainable as Section 43 of the Transfer of Property Act is applicable only when there was a sale by fraudulent or erroneous representation and transfer was made for a valid consideration. In the case on hand, there is no fraudulent or erroneous representation, as it is a settlement deed by the father in favour of the daughter and the valid consideration is only love and affection. Hence, the applicability of Section 43 of the Transfer of Property Act does not arise for consideration. Even assuming that the same is applicable, a notice under Section 43 of the Transfer of Property Act ought to have been issued. There is no such notice issued by the plaintiff. Hence, the claim of the plaintiff under Ex.A1 cannot stand, as on the date of the document, the executant himself did not have a valid title. While so, when Ex.A1 itself did not confer any title, the challenge to the revocation of the same is unnecessary.

12. Though the plaintiff has claimed an alternative relief of refund of whatever amount she had advanced to her father, both the Courts have concurrently held that there is no proof for such payment and there is no finding on that issue and also that no Court fees paid for the same. Therefore, the question of granting alternative relief also does not arise for consideration.

13. In fine, the substantial questions of law are answered against the plaintiff and the second appeal is dismissed. No costs.

VCJ

2016-5-L.W. 859

**BEFORE THE MADURAI BENCH OF
MADRAS HIGH COURT**

10.11.2016/TR.C.M.P.(MD).No.221 of
2016 and C.M.P.(MD)No.4234 of 2016

S.M.Subramaniam, J.

R.Agnes Bellarmina ... Petitioner

vs.

M.Anbunathan ... Respondent

Petition filed under Section 24 of the Code of Civil Procedure, praying to withdraw I.D.O.P.No.14 of 2016 from the Principal District Court, Pudukottai to the Principal District Court, Madurai to be tried along with the petition for restitution of conjugal rights in I.D.O.P.No. 8 of 2015 filed by the petitioner.

**Family courts act (1984), Sections 3,7,
Family courts, jurisdiction**

**C.P.C., Sections 9,24, Civil court's
jurisdiction, bar of, matrimonial matters**

**Petition to transfer case from the Principal
district court, pudukkottai to the principal
district court, madurai**

**Convenience of parties regarding
appearance cannot be criteria while
transferring case — Courts should not
entertain matrimonial cases in regular
Civil Court namely, the Sub Court and the
District Court, when the Family Courts
exist**

**held: Civil Courts namely, Sub Courts and
the District Courts are impliedly barred
from entertaining any matrimonial cases
filed within the territorial jurisdiction of
the Family Courts functioning in the
particular city or town — Case transferred
to Family court, madurai, instead of
Principal sub court, madurai with
directions**

This Court raised a question when the Family Courts are functioning at Madurai, for what purpose the case relating to matrimonial cases should be transferred to the Principal Sub Court, Madurai, which was already flooded with criminal and civil cases and appeals. The respective counsels represented that in Family Court, parties are to be present and in the Principal Sub Court, counsels are required to be present to conduct the case and to avoid the appearance of the parties, they are making such a request. Such request cannot be accepted and the convenience of the parties regarding their appearance cannot be the criteria while transferring the case from one court to another. Once the case is filed by the litigants, it is the duty of the litigants to pursue the case in accordance with law. Para 9 In the case on hand, the petitioner seeks transfer of the matrimonial case from Principal District Court, Pudukottai, to the Principal District Court, Madurai though the Family Court is very well functioning in Madurai. Such practice will not only create ambiguity and also will create inconsistencies. The matrimonial cases dealt by the regular Civil Courts are different and the proceedings in the Family Courts are different, since the Family Courts are specialised courts to conduct the matrimonial cases, more specifically, the procedures adopted will be litigant friendly. But, in the regular Civil Court, the procedures will be strictly in accordance with the Code of Civil Procedure and in order to avoid such a meticulous procedure, the Parliament enacted the Family Courts Act, to create a conducive circumstances, more specifically, between the husband and wife when they are in distress. Para 13

Courts should not entertain the matrimonial cases in the regular Civil Court namely, the Sub Court and the District Court, when the Family Courts exist. This apart, this Court is willing to cite Section 9 of the Code of Civil Procedure, which enumerates that Courts

shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Para 14

Section 9 of the Code of Civil Procedure is unambiguous with regard to the implied bar imposed for trying a civil suit. In respect of the Family Courts Act, it is very clear that the notification was issued under the Act in consultation with the Hon'ble High Court. The Gazettee Notification prescribes constitution, territorial jurisdiction of the respective Family Courts. Such being the case, it is to be construed that the other Civil Courts namely, Sub Courts and the District Courts are impliedly barred from entertaining any matrimonial cases filed within the territorial jurisdiction of the Family Courts functioning in the particular city or town. Therefore, before entertaining any matrimonial case, the Sub Courts and District Courts are bound to verify whether the Family Courts are functioning within the territorial jurisdiction or not. If there is no Family Court, then the litigants shall be permitted to file the matrimonial cases before the regular Civil Court and if the Family Courts are functioning under the Family Courts Act, then the parties should not have any option, but to file their matrimonial disputes only before Family Courts. Para 15

The present case on hand, prayer sought for is to transfer the case from the Principal Sub Court, Pudukkotai to the Principal Sub Court, Madurai. The same cannot be accepted in view of the principles stated supra. This Court is inclined to transfer the case to the Family Court, Madurai, instead of Principal Sub Court, Madurai. Accordingly, this petition is allowed with directions Para 16

Law Commission in its 59th Report (1974);

— Referred to.
Petition allowed

For Petitioner : Mr.J.Barathan

For Respondent : Mr.A.Sivasubramanian

ORDER

The present Transfer petition is filed seeking transfer of I.D.O.P.No.14 of 2016 from the Principal District Court, Pudukkottai to the Principal District Court, Madurai to be tried along with the petition for restitution of conjugal rights in I.D.O.P.No. 8 of 2015 filed by the petitioner.

2. The respective counsels for both parties are heard.

3. The marriage between the petitioner and the respondent was solemnized on 04.07.1990 as per Christian rights and customs. Out of the wedlock, two female children born on 24.03.1991 and 24.03.1996 respectively. Peculiarly, after 20 years from the date of marriage, the parties developed misunderstanding and now they are living separately. The petitioner filed I.D.O.P. No.8 of 2015 for restitution of conjugal rights before the Principal Sub Court, Madurai. The respondent has filed a petition for divorce in I.D.O.P.No.14 of 2016, which is pending before the Principal District Court, Pudukkottai.

4. The contention of the petitioner is that the respondent threatened her and she made a complaint before All Women Police Station, Pudukkottai and due to the inaction, she filed Cr.M.P.No.29 of 2016 which is pending before the Mahila Court/Judicial Magistrate, Madurai under Section 190(1) and (200) Cr.P.C. The respondent is coming to Madurai for attending the hearing in Cr.M.P.No.29 of 2016. Further, the respondent is working as Junior Assistant in Agricultural Engineering Department at Pudukkottai and the petitioner is working in a private concern and she has to look after her two daughters and not in a position to travel to Pudukkottai to defend the case filed by the respondent for divorce.

5. The learned counsel for the respondent opposed the petition by stating that the petitioner herself left the matrimonial home

along with children by developing misunderstanding and falsely filed the complaint against the petitioner. Further, the petitioner is working at Madurai and she is unable to spend and travel to defend the case at Pudukkottai. Hence, the petition is to be dismissed.

6. In respect of transfer of matrimonial cases, this Court has taken a consistent view that the place of the wife is to be preferred. Hence, the circumstances narrated by the petitioner deserves consideration.

7. In the present case on hand, the petitioner is having grown-up daughters and she has to look after their needs.

8. Considering the facts and circumstances of the case and the fact that the respondent is a Government servant and getting good amount of salary more specifically as Junior Engineer and he can travel to Madurai to defend the case and the balance of convenience is in favour of the petitioner and this Court is inclined to consider the case of the petitioner.

9. At this juncture, the learned counsel for the petitioner as well as the learned counsel for the respondent requested this Court to transfer the case from the file of the Principal Sub Court, Pudukkottai to the Principal Sub Court, Madurai. This Court raised a question when the Family Courts are functioning at Madurai, for what purpose the case relating to matrimonial cases should be transferred to the Principal Sub Court, Madurai, which was already flooded with criminal and civil cases and appeals. The respective counsels represented that in Family Court, parties are to be present and in the Principal Sub Court, counsels are required to be present to conduct the case and to avoid the appearance of the parties, they are making such a request. Such request cannot be accepted and the convenience of the parties regarding their appearance cannot be the criteria while transferring the case from one

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court to another. Once the case is filed by the litigants, it is the duty of the litigants to pursue the case in accordance with law. Such being the position, this Court is curious to look into the provisions of the Family Courts Act and Section 3 reads as follows:

3. Establishment of Family Courts: (1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification -

(a) shall as soon as may be after the commencement of this Act, established for every area in the State comprising city or town whose population exceeds one million, a Family Court;

(b) may establish Family Court for such other areas in the State as it may deem necessary

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits.

10. Section 7 deals with jurisdiction which is extracted hereunder:

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 purpose 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 respects to the property of the parties or of either of them;

(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.

11. The Family Courts Act, 1984 (Act 66 of 1984) was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs and for matters connected therewith.

12. The statement of objects and reasons set out for the enactment of the above Act is that several associations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th Report (1974) has also stressed that in dealing with disputes concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure, 1908 was amended in 1976 to provide for a

special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the Courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

The Bill, inter alia, seeks to,--

- (a) provide for establishment of Family Courts by the State Governments;
- (b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;
- (c) enable the State Governments to set up, such Courts in areas other than those specified in (b) above;
- (d) exclusively provide within the jurisdiction of the Family Courts the matters relating to:--
 - (i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of a marriage or as to the matrimonial status of any person;
 - (ii) the property of the spouses or of either of them;
 - (iii) declaration as to the legitimacy of any person;
 - (iv) guardianship of a person or the custody of any minor;
 - (v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure, 1973;
- (e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and the rigid rules of procedure shall not apply;
- (f) provide for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the services of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the Court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;

(i) provide for only one right of appeal which shall lie to the High Court.”

13. From the above statement of objects, it is apparent that the purpose of the Act is to provide an opportunity of conciliation, settlement or for speedy disposal. Such being the case, now litigants at their whims and fancies are permitted to choose the courts of their choice. In the case on hand, the petitioner seeks transfer of the matrimonial case from Principal District Court, Pudukottai, to the Principal District Court, Madurai though the Family Court is very well functioning in Madurai. Such practice will not only create ambiguity and also will create inconsistencies. The matrimonial cases dealt by the regular Civil Courts are different and the proceedings in the Family Courts are different, since the Family Courts are specialised courts to conduct the matrimonial cases, more specifically, the procedures adopted will be litigant friendly. But, in the regular Civil Court, the procedures will be strictly in accordance with the Code of Civil Procedure and in order to avoid such a meticulous procedure, the Parliament enacted the Family Courts Act, to create a conducive circumstances, more specifically, between the husband and wife when they are in distress. It is a legislation exist in order to redress the grievances of the distressed husband and wife and such being the intention of the legislature, the objects of the same should not be allowed to be defeated or diluted by the litigants.

14. This apart, the reasons set out in this case are that in the regular Civil Court, the Advocates can appear and conduct the case

in the absence of the appearance of the parties, but in the Family Court, the parties should be present, so that they can very well understand the nature of the proceedings going on in the Family Court and its consequences. The parties in distress, more specifically, the husband and wife should witness the legal proceedings, since it relates to their personal life. The husband and wife when they appear jointly before the Family Court and participate in the proceedings, it will definitely create some impact on them or at least to understand the legal consequences and the implications of their future life. When such being the object of the Act and the legislation, the Courts should not entertain the matrimonial cases in the regular Civil Court namely, the Sub Court and the District Court, when the Family Courts exist. This apart, this Court is willing to cite Section 9 of the Code of Civil Procedure, which enumerates that Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

15. Section 9 of the Code of Civil Procedure is unambiguous with regard to the implied bar imposed for trying a civil suit. In respect of the Family Courts Act, it is very clear that the notification was issued under the Act in consultation with the Hon'ble High Court. The Gazettee Notification prescribes constitution, territorial jurisdiction of the respective Family Courts. Such being the case, it is to be construed that the other Civil Courts namely, Sub Courts and the District Courts are impliedly barred from entertaining any matrimonial cases filed within the territorial jurisdiction of the Family Courts functioning in the particular city or town.

Therefore, before entertaining any matrimonial case, the Sub Courts and District Courts are bound to verify whether the Family Courts are functioning within the territorial jurisdiction or not. If there is no Family Court, then the litigants shall be permitted to file the matrimonial cases before the regular Civil Court and if the Family Courts are functioning under the Family Courts Act, then the parties should not have any option, but to file their matrimonial disputes only before the Family Courts.

16. The present case on hand, prayer sought for is to transfer the case from the Principal Sub Court, Pudukkottai to the Principal Sub Court, Madurai. The same cannot be accepted in view of the principles stated supra. This Court is inclined to transfer the case to the Family Court, Madurai, instead of Principal Sub Court, Madurai. Accordingly, this petition is allowed with the following directions:

i) The learned Principal District Judge, Pudukkottai, is directed to transmit the entire records in I.D.O.P.No.14 of 2016 to the file of the Family Court, Madurai, within a period of two weeks from the date of receipt of copy of this order.

ii) the learned Judge, Family Court, Madurai, after obtaining the records on transfer, is directed to try I.D.O.P.No. 14 of 2016 along with I.D.O.P. No. 8 of 2015 and dispose of the matters as expeditiously as possible in accordance with law.

No costs. Consequently, connected C.M.P.No.4234 of 2016 is closed.

Registry is directed to circulate copy of this order to all the Subordinate Courts.

VCJ