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DATED THIS THE 27TH DAY OF JANUARY, 2025

THE HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCL. FIRST APPEAL NO.202179 OF 2023 (FC)

BETWEEN:

[REDACTED]

...APPELLANT

AND:

1. [REDACTED]

2.

3.





(B

...RESPONDENTS

)

THIS MFA IS FILED UNDER SECTION 19(1) OF THE FAMILY COURTS ACT, 1984, PRAYING TO CALL FOR THE RECORDS AND TO SET ASIDE THE ORDER DATED 27.02.2023 PASSED BY THE PRINCIPAL JUDGE, FAMILY COURT, KALABURAGI IN O.SNO.5/2018 BY ALLOWING THIS APPEAL WITH COSTS, IN THE INTEREST OF EQUITY AND JUSTICE.

THIS MFA COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV
AND
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE S.SUNIL DUTT YADAV)

The present appeal is filed by the plaintiff before the Family Court, Kalaburagi aggrieved by the order passed by the Family Court whereby it has directed to return the plaint observing that Court has no jurisdiction to entertain the suit stating that the suit is barred in terms of Section 7 of the Family Courts Act, 1984 and falls outside the jurisdiction of a Family Court.



2. The parties are referred to by their rank before the Trial Court.

3. Plaintiff had filed suit seeking for a declaration that defendant No.1 is not the legally wedded wife of the plaintiff and defendant Nos.2 and 3 are not the children of the plaintiff. Further, plaintiff had sought for passing of an order to restrain defendant No.1 from claiming herself as the wife of the plaintiff and defendant Nos.2 and 3 to be restrained from claiming themselves as children/daughters of plaintiff by granting a decree of perpetual injunction against them.

4. The facts as asserted in the plaint are that Anil is the legally wedded wife of the plaintiff and plaintiff has begotten three children from within the said wedlock.

5. The specific case of the plaintiff that defendant No.1 had married one Bhagavantharaya Kalshetty and defendant Nos.2 and 3 are children born from within the said wedlock between defendant No.1 and



Bhagavantharaya. It is further submitted that said matrimonial relationship between defendant No.1 and Bhagavantharaya came to be dissolved by a decree of consent by filing petition under Section 13-B of the Hindu Marriage Act in M.C.No.56/2001.

6. It is the further case that defendant No.1 then started asserting that she had married the plaintiff on 10.10.1987 and defendant Nos.2 and 3 are the children born from the said wedlock.

7. The plaint came to be returned at the time of final hearing of the suit solely on the legal contention that the suit falls outside the purview of jurisdiction of the Family Court which is authorised to take up matters as stipulated under Section 7 of the Family Courts Act. The adjudication by the Family Court is solely on the interpretation of explanation to Section 7 of the Family Courts Act. The Court has also taken note of another contention relating to the nature of relief being a negative declaration. The Family Court has referred to explanation



to Section 7 of the Family Courts Act and has held that the Family Court has got jurisdiction to entertain the suit which only falls within the scope of Section 7 including the explanation to the said section. The Court in its order has observed that a negative declaration is sought for and in terms of the judgment of the Division Bench in ***Bhuvaneshwari vs. Revappa @ Ranisiddaramappa Kolli (since deceased) by LRs.***¹, such relief is impermissible.

8. The said order is under challenge before this Court and the learned counsel for the appellant submits that the relief sought though squarely comes within the purview of Section 7 of the Family Courts Act and in specific the explanation (b) to Section 7 covers such suits as falling within the jurisdiction of the Family Courts Act. It is submitted that in a suit as regards the matrimonial status of any person is a matter falling within the jurisdiction of the Family Court Act. It is further submitted that in the present case the relief sought for relates to the

¹ 2012 (4) KCCR 2690



matrimonial status of defendant No.1 who claims to be the wife of plaintiff and as well as the status of the children of defendant No.1 which has a direct bearing on the determination of the matrimonial status of the first defendant who allegedly claims that she is the wife of the plaintiff. It is further submitted that the legal position as regards the bar for filing suits seeking negative reliefs is now settled by virtue of the judgment in the case of **Balram Yadav v. Fulmaniya Yadav** in Civil Appeal No.4500/2016 (arising out of SLP (C) No.8076/2015).

9. Learned counsel for respondent No.1, who is the defendant No.1, submits that the plaintiff is a Christian and the proceedings ought to have been initiated under the provisions of Special Marriage Act.

10. Heard both sides.

11. The facts are not in dispute. The defendant No.1 claims to be the wife of the plaintiff and defendant



Nos.2 and 3 are the children born from the said marriage.

The point for consideration in the present appeal is:

"Whether the finding of the trial Court that the plaintiff falls outside the jurisdiction of the Family Courts Act and specifically outside the scope of Section 7 requires interference?"

12. The plaintiff was filed seeking for the following reliefs:

- "1. It is declared that, the defendant 1 is not the legally wedded wife of plaintiff and that defendants 2 and 3 are not the children of plaintiff.*
- 2. The defendant 1 be restrained from claiming herself as the wife of the plaintiff and defendants 2 and 3 be restrained from claiming themselves as the children/daughters of the plaintiff by granting a perpetual injunction against them in that regard.*
- 3. The defendants be directed to pay costs of the suit to plaintiff.*
- 4. Any other relief to which the plaintiff is entitled be also granted to him."*

13. A perusal of the said prayer makes it clear that the suit relates to the legal matrimonial status of the plaintiff and defendant No.1. Any findings regarding said



matrimonial status would also have a bearing insofar as the status of defendant Nos.2 and 3 which is a consequential finding. Insofar as the scope of suits to be entertained by the Family Courts is governed by Section 7 of the Family Courts Act which 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 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 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.”

(emphasis supplied)

14. It is to be noticed that the explanation to Section 7 of the Family Courts Act provides that the suits and proceedings referred to in sub-section are suits and



proceedings of nature detailed in the explanation and explanation (b) is of immediate relevance in the present case. It is clear on a reading of explanation (b) to Section 7 of the Family Courts Act extracted above that a suit relating to matrimonial status of any person would be a suit falling within the scope of Section 7 of the Family Courts Act. A bare perusal of the plaint, as noticed above, relates to matrimonial status of defendant No.1 with the plaintiff. The relationship of defendant Nos.2 and 3 also depends on a finding on the matrimonial status of plaintiff and defendant No.1 as husband and wife as asserted by defendant No.1.

15. Insofar as the finding that the suit is barred by virtue of having sought for a negative declaration by reliance on the judgment in the case of *Bhuvaneshwari v. Revappa (supra)*, in light of the judgment of the Apex Court in ***Balram Yadav v. Fulmaniya Yadav (supra)*** which holds that such prayer would be maintainable, the latter view would prevail.



16. The Apex Court in the case of **Balram Yadav vs. Fulmaniya Yadav** in Civil Appeal No.4500/2016 while considering identical factual matrix with both legal contentions noticed above has in its observations at paras- 6 and 7 held that if 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 and it would not matter whether it is an affirmative relief or a negative relief. Paras-6 and 7 of the said judgment reads as follows:

"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.”

17. In light of the above, noticing that the suit relates to matrimonial status of defendant No.1 with the plaintiff, the finding of the Family Court is erroneous and is liable to be set aside in light of the discussion made above. Insofar as negative relief sought for, the Apex Court has held that it does not make any difference even if such negative relief is sought for.

18. Accordingly, the point for consideration is answered in the affirmative. The appeal is allowed. The order of the Family Court is set aside on the sole ground



that the conclusion arrived at that suit does not fall within the purview of Section 7 of the Family Courts Act is erroneous and consequently the plaint is directed to be taken on record and proceedings are to be resumed.

Parties to mark their appearance before the Family Court without further notice on **12.02.2025**.

**Sd/-
(S.SUNIL DUTT YADAV)
JUDGE**

**Sd/-
(RAJESH RAI K)
JUDGE**

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