



Priya

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**SUIT NO.2544 OF 2012
WITH
NOTICE OF MOTION NO. 2609 OF 2012**

Pearl Chesson ... Plaintiff/Applicant
Vs.
Sean Lawrence and ors. ... Defendants

Mr.Karl Tamboly i/by M/s Jayakars for the Plaintiff.

**CORAM : S.C. GUPTE, J.
DATE : 17 JANUARY 2018.**

P.C. :

1. Heard learned counsel for the Plaintiff. The Defendants have been absent throughout at the hearing of the suit. The suit was at one stage even transferred to the list of undefended suits. Since, however, by an order dated 16 January 2014, a preliminary issue was framed in the suit, this court, by its order dated 5 October 2017, caused notices to be issued to the Defendants for hearing of the preliminary issue. Despite notice, none appears for the Defendants.

2. The suit is placed on board today for hearing of the

preliminary issue. The preliminary issue framed in the matter is in the following terms :

“Whether this court has jurisdiction to entertain and try the present suit, having regard to Sections 7 and 8 of the Family Courts Act?”

3. The Plaintiff has led documentary evidence on the issue.

4. The Plaintiff is the wife of Defendant No.1 and daughter-in-law of Defendant No.2. Defendant No. 3 is the society, in the building of which the suit flat is situated. It is the case of the Plaintiff that she and Defendant No.1, who lived in Dubai throughout their matrimonial life, had bought two flats in Mumbai through their own individual funds. Flat No.I-601 in Defendant No.3-society was bought by Defendant No.1, whereas Flat No.I-602 was bought by the Plaintiff. There are registered Agreements for Sale in favour of the purchasers, namely, the Plaintiff and Defendant No.1, respectively, for flat Nos.I-602 and I-601. The Plaintiff claims a declaration that she is the owner of flat No.I-602 (“suit flat”) and that neither of Defendant Nos. 1 and 2 has any

right to the suit flat. As a consequential relief, the Plaintiff claims a perpetual injunction against both Defendants restraining them from dealing with the suit flat.

5. The Plaintiff's notice of motion seeking interlocutory reliefs in respect of the suit flat is opposed by Defendant Nos. 1 and 2. It is the case of the Defendants that the present suit is barred on account of the provisions of Sections 7 and 8 of the Family Courts Act. It is submitted that for a suit between parties to a marriage with respect of any property of the parties, it is the Family Court which alone shall exercise jurisdiction exercisable by any District Court or Subordinate Civil Court under any law for the time being in force. It is submitted that since the Family Court has been established for the particular area and the suit is governed by the Explanation to Section 7 of the Act, no other courts including any District Court or Subordinate Civil Court shall have jurisdiction to entertain and try the suit.

6. At the outset, it is important to note that the present suit is not a proceeding arising out of the Hindu Marriage Act or the

Special Marriage Act. It is a pure and simple proceeding for a declaration under Section 34 of the Specific Relief Act 1963, seeking to establish a right to property. It is a suit filed by the owner of the property against persons denying or interested in denying the former's title to the property. The perpetual injunction claimed in the suit is merely consequential to the declaratory relief sought in the main prayer. Such a suit cannot be said to be barred under the provisions of Sections 7 and 8 of the Family Courts Act.

7. The Supreme Court in the case of **Samar Kumar Roy Vs. Jharna Bera**¹ discussed the scope of Section 34 of the Specific Relief Act vis-a-vis Sections 7 and 8 of the Family Courts Act. The Court held that essentially it is only the suits or proceedings between the parties to a marriage and concerning the provisions of Hindu Marriage Act or Special Marriage Act, which are made the subject of exclusive jurisdiction of the Family Courts established under the Family Courts Act. These suits are barred from being entertained by any District or other Civil Court and not suits for declaration of a legal character under Section 34 of the Specific

1 (2017)9 Supreme Court Cases 591

Relief Act. The case before the Supreme Court concerned a suit filed by one Samar Kumar Roy against once Jharna Bera. The suit was instituted for a declaratory decree under Section 34 of the Specific Relief Act and also claimed a perpetual injunction under Section 38 of that Act. According to the plaintiff, he was a junior employee under the same Directorate where the defendant was working and by blackmail and coercion, a show of marriage was arranged by the defendant's father with the plaintiff by registration of the purported marriage under the Special Marriage Act, 1954. The plaint averred that there were no ceremonies of a Hindu marriage performed and there was no consummation of the marriage, and accordingly, the defendant was not a legally married wife of the plaintiff and had no right to claim him as her husband. The case, in short, was that the alleged marriage between the Plaintiff and Defendant was not legally valid or tenable in law. Simultaneously, the plaintiff claimed a perpetual injunction against the defendant restraining her from claiming him to be her husband or disturbing him at his office or on his way to the office or back home. The argument before the court was that the suit being a proceeding between parties to a marriage for a

decree of nullity, or declaration as to the validity, of the marriage, the Family Court alone had the jurisdiction in the suit; that the suit fell within the Clauses (a) and (b) of the Explanation to Section 7 of the Family Courts Act. The Supreme Court held that it was obvious that a suit or proceeding between the parties to a marriage alleging nullity, etc. referred to in Sections 7 or 8 was a suit or petition filed under Hindu Marriage Act and/or Special Marriage Act for such reliefs. There was no reference whatsoever in Sections 7 and 8 to suits filed for declaration of a legal character under Section 34 of the Specific Relief Act. The Court referred to **Dhulabhai Vs. State of Madhya Pradesh**¹ and after considering the various propositions of law laid down therein, and in particular, the propositions laid down in Serial Nos. 2 and 7 of para 32 of that judgment, held that Section 8(a) of the Family Courts Act excluded the Civil Court's jurisdiction in respect of only those suits or proceedings between parties to a marriage, which were filed under Hindu Marriage Act or Special Marriage Act, for annulment or dissolution of marriage or for restitution of conjugal rights, etc., and not those suits which were filed under Section 34

1 (1968)3 SCR 662; AIR 1969 SC 78

of the Specific relief Act for a declaration as to the legal character of an alleged marriage. The Court also noted in this connection that exclusion of the jurisdiction of a civil court cannot be readily inferred. The Court in that case held that given the line of judgments referred to by the High Courts, and given the fact that a suit for declaration as to a legal character which include the matrimonial status of parties to a marriage, when it comes to a marriage which allegedly has never taken place either de-jure or de-facto, the Civil Court's jurisdiction to determine such legal character is not barred either expressly or impliedly by any law.

8. Coming now to the facts of our case, it is clear that the present suit does not arise out of or in any way concern any of the provisions under Hindu Marriage Act or Special Marriage Act. Though the parties here simply happen to be husband and wife, the suit is in respect of a property, which is owned as an individual by the Plaintiff-wife. In the suit, she is seeking a declaration as to her title or right to the property against two individuals, who happen to be her husband and father-in-law, both of whom are interested in denying that title or right to her. The suit is typically

a suit under Section 34 of the Specific Relief Act and not a proceeding between a husband and a wife relating to property coming within Clause (a) of the Explanation to Section 7 of the Family Courts Act. The suit not being covered under the provisions of Section 7, it cannot be said to be barred under Section 8 for the civil courts to exercise their jurisdiction.

9. Secondly, it is also important to note that the suit is not only against the Defendant-husband, but also against the father-in-law of the Plaintiff, who is also interested in denying the Plaintiff's title to the suit flat. The Plaintiff cannot in such an action be asked to split her cause of action and take a part of it before the Family Court and prosecute the other part before the Civil Court. As far as the Defendant-father-in-law is concerned, the suit claiming a declaration and perpetual injunction against him obviously cannot be filed before the Family Court under clause (c) of the Explanation to Section 7 of the Act.

10. Looked at from any point of view, the present suit cannot be said to be barred under Sections 7 and 8 of the Family Courts Act.

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The preliminary issue is accordingly answered in the affirmative, that is to say, in favour of the Plaintiff.

11. Post the notice of motion now for final hearing on 31 January 2018.

(S.C.GUPTE J.)