



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on :30 January 2024**
Judgment pronounced on:01 April 2024

+ CS(OS) 601/2022 & I.A. Nos. 15957/2022 (O. 39 R. 1&2),
20302/2022 (for Direction)



..... Plaintiff

Through: Mr. Rakesh Tiku, Senior Adv.
with Mr. Rakesh Kumar, Mr.
Tarun Pilania & Mr. Sandeep
Kumar, Advs.

versus



& ANR.

..... Defendants

Through: Mr. Nakul Mohta, Ms. Misha
Rohatgi Mohta, Mr. Bharat
Monga & Ms. Riya Dhingra,
Advs. for D-1.
Dr. Amit George, Amicus
Curiae with Mr. Rishabh Dheer
& Mr. Arkaneil Bhaumik,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

DHARMESH SHARMA, J.

1. A learned Single Judge of the Court noticing a situation of conflict of opinion with regards to the jurisdiction of the Family Courts vis-à-vis Civil Courts as to certain kinds of matrimonial disputes propounded in **Manita Khurana v. Indira Khurana**¹ and

¹2010 SCC OnLine Del 225



Meena Kapoor v. Ayushi Rawal² on the one hand and **Avneet Kaur v. Sadhu Singh**³ on the other hand, has referred the following questions for our consideration: -

“(a) Whether a suit for possession /injunction filed by the in-laws of the defendant or either of them, claiming themselves or either of them to be the exclusive owner of the property of which the possession is sought or with respect to which injunction is prayed for from or against the defendant/daughter-in-law, is to be tried exclusively by the Family Court established under the Family Courts Act, and the jurisdiction of the Civil Court is barred?

(b) Whether the impleadment or non-impleadment of the husband of the defendant/son of the plaintiff has any effect on the maintainability of such a suit before a Civil Court?”

2. The issue arises in the context of interpretation, scope and ambit of Explanation (d) of Section 7(1) of the Family Courts Act, 1984⁴ (hereinafter referred to as ‘subject provision’) wherein a suit, proceeding for an order or injunction ‘*arising out of a marital relationship*’ is to fall under the ambit of the jurisdiction of Family Courts. The primary contestation centres around the question whether the claim of a third party against or involving a party to a marriage, even if he/she is a parent of one of the spouses, should be exclusively tried before the Family Court, thereby ousting the jurisdiction of Civil Court. It flows from the conflicting observations of the Court in the above mentioned cases wherein while the learned Single Judge in *Avneet Kaur (supra)* held that a suit seeking eviction would be maintainable before Family Courts **as marriage is the foundation of**

²2020 SCC OnLine Del 2481

³2022:DHC:2453

⁴FC Act



this dispute, the learned Single Judges in the earlier decisions in *Manita Khurana (supra)* and *Meena Kapoor (supra)* have taken a different view holding that such suits would be outside the purview of the Family Courts. The aforesaid issue forms the core of Question (a).

3. Question (b) flows from the learned judge concluding that there is an apparent conflict between the above-mentioned decisions regarding the jurisdiction of Family Court depending upon who the litigating parties are, since in *Avneet Kaur* it was opined that upon the reading of subject provision it cannot be inferred that jurisdiction of Family Courts is limited to litigation between husband and wife. It has been observed that the above is in direct conflict with the judgments in *Manita Khurana* and *Meena Kapoor*; and that the same have not referred while giving the decision in *Avneet Kaur*. The Courts in *Manita Khurana* and *Meena Kapoor* had held that based on a mother-in-law's exclusive title to property, a suit seeking injunction or eviction filed by her against the daughter-in-law cannot be said to be a suit '*in circumstances arising out of a marital relationship*', thus it cannot be exclusively tried by a Family Court.

4. It would be expedient to briefly refer to the factual narrative of the matters in hand in order to answer the questions that have been formulated for our consideration. The **appellant/ plaintiff** Ms. [REDACTED] is the mother-in-law of **respondent No. 1/defendant No.1** Ms. [REDACTED]. The marriage between her son Arjun Anand, who is arrayed as **respondent No. 2/defendant No.2** and respondent No. 1 was solemnised on 10.12.2005. The estranged couple are also parents of two children.



5. The genesis of the suit lies in the disharmony and matrimonial discord between the parties, pertaining especially to the estranged relationship between respondent No. 1 and respondent No. 2, and thereby respondent No. 1 is seeking right to stay in property bearing No. [REDACTED], [REDACTED], [REDACTED], [REDACTED] Delhi-[REDACTED] (hereinafter referred to as 'suit property'), which was acquired by the appellant in her name along with her company [REDACTED], [REDACTED], [REDACTED], [REDACTED]. *vide* Sale Deeds dated 23/03/2007, 02/11/2004 and 02/11/2004. It is the case of the appellant that she has the sole and exclusive interest and right to enjoyment of the suit property.

6. As is borne out from the narrative of the matter, respondent No.1 started to reside in the suit property upon her marriage in 2005. Apparently, aggrieved by the constant acrimonious bickering and disharmony between the married couple and its impact on her well-being, the appellant, in an attempt to restore her peace, asked the estranged couple to move out of the 'shared household' and reside in another property of the appellant at Greater Kailash-II, New Delhi (hereinafter referred to as 'GK 2 property'). The appellant states that she wanted to live peacefully and in complete harmony with respondent No.1, respondent No.2 and her grand children, but respondent No.1 and respondent No.2 could not make peace to an extent that in February 2020, Respondent No.2 was allegedly asked to leave/thrown out of the GK2 property by respondent No.1, and respondent No.1 allegedly changed the lock so as to restrict the entry of respondent No.2 in the GK2 property. The appellant further contends that the temperamental issues of respondent No.1 and her



acts of harassing the appellant knew no end as on 23/04/2022 and 20/05/2022, respondent No.1 barged into the office of the appellant without her consent and upon her visit on the latter date, respondent No.1 allegedly took appellant's vehicle, one Mercedes Maybach bearing registration No. [REDACTED] as hostage to seek fulfilment of her demand for an exorbitant amount of financial settlement. Upon non-fulfilment of the same, respondent No.1 along with her children returned to the suit property on 25/05/2022, without prior consent of the appellant and without any intimation, on the pretext that she was worried for the safety of her children at the GK2 property and that the children missed being in the suit property.

7. It is the case of the appellant that due to the aggressive and abusive temperament of respondent No.1 peace could never prevailing the suit property. Aggrieved by such behaviour, the appellant filed a suit for permanent injunction seeking the following reliefs so as to be enabled to peacefully enjoy the suit property: -

- a. Pass a decree of Permanent Injunction in favour of the Plaintiff and against the Defendant No. 1 her relatives, agents, associates and/or employees thereby restraining them from visiting or entering the Suit Property at No. 26, Anand Lok, New Delhi-110049 and interfering in the peaceful life of the Plaintiff,
- b. Award the cost of the present suit in favour of the Plaintiffs and against the Defendants."

8. Suffice it to state that defendant No. 1/ respondent No. 1 in her defence has denied all the allegations averred against her, and stated that her husband i.e., respondent No.2 leads a lifestyle which does not align with the requirements of a family life, and that her mother-in-law has also been unaccommodating and hostile towards her.



9. At this juncture, it may be noted that the facts in the instant matter are almost akin to those in *Avneet Kaur*, wherein serious allegations of misbehaviour and temperamental issues were levelled against the petitioner/daughter-in-law by the respondents/parents-in-law, who sought a decree of permanent injunction, restraining the petitioner/daughter-in-law from entering the suit property, as well as a decree of mandatory injunction, directing the petitioner/daughter-in-law to remove her belongings as well as her children from the suit property. The petitioner/daughter in law moved an application to refer the matter to the Family Court in terms of section 7 & 8 the FC Act, which was dismissed by the learned Senior Civil Judge. This order was successfully assailed in writ under Article 227 of the Constitution, and the learned Single Judge, held as under:-

“27. What has to be **seen is whether the circumstances** in which the order or injunction is sought in the present case arise out of a marital relationship. **The test is not whether the cause of action, forming the basis of the prayer for injunction, arises out of a marital relationship or whether the marital relationship is the reason for the grievance ventilated by the plaintiff.** All that has to be seen are the circumstances in which the injunction is sought. Once the Court identifies the circumstances, if those circumstances arise out of a marital relationship, Clause (d) of the Explanation to Section 7 (1) of the Family Courts Act would *ipso facto* be attracted.

28. Explanation (d) in Section 7 (1) of the Family Courts Act does not, either expressly or by necessary implication, require the parties to the *lis* to be husband and wife. Clearly, in so opining, the learned SCJ has effectively re-written the statutory provision. There is nothing in Clause (d) of the explanation to Section 7 (1) of the Family Courts Act in which indicates that the clause would apply only where the litigation is between husband and wife. For the clause to apply, all that is required is **that (i) there is a marital relationship, (ii) the martial relationship has resulted in a certain set of circumstances and (iii) the order or**



injunction which is sought in the suit is sought in those circumstances.

29. Applying these tests to the case at hand, if one examines the plaint, and the case set up by the respondents in the plaint, it is clear that the circumstances in which injunction has been sought by them have arisen out of the marital relationship between the petitioner and Pardip. **Had the petitioner not married Pardip, she would never have been the daughter-in-law of the respondents, she would never have come to stay in the residence of the respondents, the respondents would never have given her any permissive licence to reside therein, and the entire chiaroscuro of events, which have been emphasised in the plaint by the plaintiffs, to highlight the alleged ignominy and persecution to which petitioner allegedly subjected the respondents, would not be in existence. The fact that the petitioner married the respondents' son was the foundation of the relationship that emerged between the petitioner and the respondents, and it was in the circumstances which arouse out of that relationship** that the entire dispute between the respondents and the petitioner, as per the allegations contained in the plaint, filed by the respondents, arose. **{Bold portions emphasized}**

10. In the case of *Manita Khurana*, the suit was filed by the respondent/mother-in-law seeking relief of possession and damages against her daughter-in-law/petitioner claiming herself to be absolute owner of the property and alleging that she had been kicked out of her own house by the petitioner. Her son was not made a party to the suit. The latter moved an application for transferring the matter to the Family Court, which was rejected and the petitioner/daughter in law challenged the impugned order, which was decided by this Court holding as under:-

“17. What is however significant in the present case is that the husband of the petitioner is not a party to the suit. The Kerala High Court has had occasion to consider whether a suit to which persons other than spouses are a party would continue to be governed by the Family Court Act or not. A Single Judge of the Kerala High Court in *Shyni v. George*, AIR 1997 Kerala 231, held that merely because a stranger to the marriage (in that case the father-in-law) is



also impleaded in the suit along with the husband on the ground that the property of the wife or a portion of it also has been handed over to him would not take away the suit from the purview of the Family Court. It was further held that the jurisdiction of the Family Court is not confined to proceedings by one spouse against another and that so long as the suit is of one spouse against the other, the suit would be maintainable in the Family Court even if for the purpose of seeking relief in respect of the cause of action put forward in the suit, the suing spouse is forced to implead persons other than the other spouse or include the close relatives of the other spouse. It was further held that the cause of action if common could not be permitted to be split up by filing a suit against the husband in a Family Court and against the father-in-law in the Civil Court. However, in the same judgment, it was observed that a suit for partition in which a party to a marriage claims a share in the property not only along with her husband or as against her husband but also along with the various other members of the joint family would be totally different from a case where a wife files a case for recovery of her exclusive property against her husband and someone else who is holding the property on her behalf like the father-in-law in that case. On the aforesaid reasoning, in *Devaki Antharjanam v. Narayanan Namboodiri*, AIR 2007 Kerala 38, another Bench of the Kerala High Court held that a suit for partition in which not only the husband and wife but their children were also parties did not fall within the exclusive jurisdiction of the Family Court and as such the decree in the suit passed by the Civil Court could not be held to be void. **The reasoning was that the property belongs not only to the parties to the marriage but to others as well. It was further held that where other parties to the suit are merely a proforma party or a party with whom the money or the property of the parties to the marriage or either of them is entrusted or where the third party claims through either or both the parties to the marriage or a legal representative of a party to a marriage or a person in possession of property of the parties to the marriage, notwithstanding such third party being party to the suit, the exclusive jurisdiction to try the suit would still be of the Family Court; however where there is a sharer to the property other than the parties to the marriage, such a sharer could not be compelled to bring a suit for partition before the Family Court merely because the other sharers were married to each other.** However, a Division Bench of the Kerala High Court in *Joseph v. Mariutn Thomas*, MANU/KE/0034/2006, held that the claim of a stranger over a property over which the wife had a charge for her maintenance was not required to be adjudicated in



the Family Court. It was held that Section 7 excludes the jurisdiction of the civil Court only in certain matters which are relating to proceedings between parties to a marriage; however, the claim of a total stranger could not be covered by Section 7 of the Act.”
{Bold portions emphasized}

11. In the matter of *Meena Kapoor*, the plaintiff/mother-in-law of defendant No. 1 and mother of defendant No. 2, had filed the suit on the original side of this Court seeking a decree of permanent injunction against the defendants restraining them or their agents, representatives etc. from entering and creating disturbance in the peaceful possession and occupation of the plaintiff to the suit property therein, claiming that she was the absolute owner. Furthermore, she stated that both the defendants were residing separately and she being a senior citizen battling with old age ailments, wanted no interference in her life from them. A preliminary issue was framed as to whether the matter should be transferred to the Family Court in terms of section 7 & 8 of the FC Act. The issue arose pursuant to decision of a Division Bench of this Court in **Amina Bharatram v. Sumant Bharatram**⁵, wherein the plaintiff therein had instituted a suit for maintenance and separate residence under Sections 18, 20 and 23 of the Hindu Adoptions and Maintenance Act, 1956 along with permanent and mandatory injunction and declaration against the defendants. On reference, a Division Bench in 2016 held that the Delhi High Court is a ‘district court’ in terms of Section 8 of the FC Act in respect of all matters enumerated in the Explanation to Section 7(1) of the FC Act, and that the Delhi High Court does not

⁵2016 SCC OnLine Del 3929



possess jurisdiction to entertain, try and decide cases and causes referred to in Sections 7 and 8 of the FC Act. The case was held to be squarely covered by Explanation (f) to Section 7(1) of the FC Act⁶. Pursuant to the decision of the Division Bench, certain Practice Directions were issued by this Court on 23rd December, 2016.⁷

12. In *Meena Kapoor*, the following observation was made while dismissing the suit :-

“13. The facts of the present case are similar to the facts in *Manita Khurana v. Indra Khurana* (supra). In the present case, the plaintiff claims to be the exclusive owner of the suit property having purchased the same by way of a registered sale deed dated 29th August, 2014 and seeks the relief of injunction against the two defendants. Merely because the two defendants are married and the defendant No. 1 has taken the plea that some money in the purchase of the suit property and the construction thereof was spent from the earnings of defendant No. 2 which plea of defendant No. 1 would be hit by the Benami Transactions (Prohibition) Amendment Act, 2016, the relief in the present suit cannot be said to be between the parties to the marriage with respect to the property of the parties or either of them. Consequently, the preliminary objection raised by the defendant No. 1 that the present suit is not maintainable and should be tried by Family Court is dismissed.”

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

13. Mr. Rakesh Tikku, learned Senior Advocate appearing for the appellant has urged that although provisions of a beneficial legislation

⁶Covers a suit a proceeding for maintenance.

⁷ Practice Directions :

1. In view of the judgment dated 19.07.2016 passed by the Hon'ble Division Bench of this Court on reference in CS(OS) No. 411/2010 & I.A. No. 12186/2010 titled 'Amina Bharatram v. Sumant Bharatram', all matters enumerated in Explanation to Sub-Section (1) of Section 7 and Section 8 of the Family Courts act, 1984 shall be exclusively triable by the Family Courts and the jurisdiction of the High Court to the extent it exercises Ordinary Original Civil Jurisdiction in respect of such matters stands excluded by virtue of Section 8(c)(ii) of the said Act. Such matters listed before this Court shall be transferred to the Family Courts by passing the necessary Orders in this respect on their dates of listing.

2. The Registry, henceforth, is directed not to accept such matters as enumerated in Explanation to Sub Section (1) of Section 7 and Section 8 of the Family Courts Act, 1984.



like the FC Act need to be interpreted liberally, however the Legislature has avoided using the term ‘family’ in Section 7 of the FC Act and thus every party or member cannot be brought within the ambit of the subject provision. It was urged that an attempt should be made to identify and chronicle certain categories of disputes falling under clause (d) to Section 7(1) of the FC Act, since such a provision cannot encompass anything and everything that may arise in connection with a family or a matrimonial relationship *simpliciter*. It was further pressed that the Family Courts are not Civil Courts but have the trappings of a Civil Court and reference was invited to ***Manita Khurana***, wherein the learned Single Judge had highlighted the following expressions used in the context of Family Courts: -

“30. The words “arising out of” have been held, by the Supreme Court, in several decisions, to be words of wide amplitude. One may refer, in this context, to the judgments of the Supreme Court in *Renusagar Power Company Ltd. v. General Electric Co.*, *Dhanrajmal Govindram v. Shamji Kalidas* and *Doypack Systems Ltd. v. Union of India*. In *State of Orissa v. State of Andhra Pradesh*, the Supreme Court held that the expression “arising out of” is wider in scope than the expression “arising under” and would include matters not only “arising under” but also matters “connected with” the instrument under consideration in that case.

31. Applying the understanding of the expression “arising out of” as contained in the afore cited decisions of the Supreme Court, **it is clear that the circumstances in which the allegedly offending acts of the petitioner, against the respondents, from which the entire dispute in the suit filed by the respondents against the petitioner germinated, arose out of the marital relationship between the petitioner and the respondent.”**

{Bold portions emphasized}

14. *Per contra*, learned counsel for the respondent No.1 has submitted that the jurisdiction of Family Courts over disputes relating to marriage and family affairs should be construed liberally and



jurisdiction of Civil Courts is expressly ousted to entertain such suits or proceedings. It was further canvassed that since the FC Act is a beneficial legislation, the provisions of the statute should be interpreted in a manner that aligns with its intent and objective. Furthermore, the disputes that are envisaged under Explanation (d), (e), (f) and (g) to Section 7(1) of the FC Act need not be strictly between ‘parties to marriage’ as there is no such explicit qualification in the said clauses. It has been urged that the subject provision needs to be interpreted widely so as to mean and include all the circumstances which transpire **before, during and after the marital life and consequences thereof** and a suit or proceedings for injunction instituted at the behest of a third party, who is not a party to the marriage, including the in-laws of the husband or the wife, if related to marriage, family affairs or other matters connected therewith would fall under the domain of the FC Act.

15. It was urged that the rights which are recognized and created under the Protection of Women from Domestic Violence Act, 2005 cannot be incorporated so as to give an exhaustive scope to the subject provision and the learned Single Judge in the matter of *Manita Khurana* had rightly concluded that merely because somebody in the family is connected due to matrimonial relationship, that by itself would not afford the ‘cause of action’ so as to seek redressal under the umbrella of the FC Act. Reference in this regard was invited to a plethora of case law⁸.

⁸KA Abdul Jaleel v. T.S.Shahida [(2003) 4 SCC 166], Dhruv Green Fields Ltd. v. Hukum Singh &Ors. [(2002) 6 SCC 416], Kamala Mills v. State of Bombay [AIR 1965 SC 1942], Dhulabhai &



16. It is pertinent to mention that having regard to the wide ramifications of the issues that arise in the present reference, this Court appointed Dr. Amit George as an *Amicus Curiae*. Suffice to state that Dr. Amit George, who has rendered commendable assistance, ardently submitted that the reference questions cannot be answered in a simple ‘yes’ or ‘no’ and rather the answer lies somewhere in the middle. It was urged that the expression ‘marital relationship’, finding its place in the subject provision should not be construed to mean any matter which may have a casual relationship with marriage but something directly or proximately connected to the matrimonial relationship as distinct from family relationship.

17. It was argued that while the decision in *Meena Kapoor* is based on vesting of jurisdiction on the Family Court by laying the foundational facts setting up the ‘cause of action’, the decision in *Avneet Kaur* is based on the test that it is not ‘cause of action’ which could constitute the basis of the prayer for injunction, but the circumstances in which the injunction is sought. It was, however, urged that the reasoning in paragraph (28) in *Avneet Kaur* is problematic as it hugely broadens the scope and ambit of the subject provision and thus might lead to an unsavoury and unpredictable

Ors. v. State of MP [1968 SCR 3662], RBI v. Peerless General Finance & Investment Co. Ltd. [(1987) 1 SCC 424], Krishna Kumar Birla v. Rajendra Singh Lodha [(2008) 4 SCC 300], Allahabad Bank v. Canara Bank & Anr. [(2000) 4 SCC 406], Renusugar Power Company Ltd. v. General Electric Co. [(1984) 4 SCC 679], H.P. Lakshmidharaj v. G.P. Asharani alias Nandini [2002 SCC OnLine Ker 337], Krishna Moorthy v. Soumya Krishnan & Anr. [2015 SCC OnLine Ker 27264], Sindhu Sidharthan v. KK Sidharthan [2010 SCC OnLine Ker 4783], Muhmmmed Davood v. Hafasath [2009 SCC OnLine Ker 4783], Suprabha v. Sivaraman K.K. & Anr. [2006 SCC OnLine Ker 30], The Member, Board of Revenue v. Arthur Paul Benthall [(1955) 2 SCR 842], United Bank of India v. Debts Recovery Tribunal [(1999) 4 SCC 69], Ram Singh v. Gram Panchayat Mehal Kalan [(1986) 4 SCC 364] and S. Vanitha v. Dept. Commissioner, Bengaluru [(2021) 15 SCC 730].



outcome. Learned *Amicus Curiae* cited for our consideration several foreign judgments on the subject although fairly conceding that though not binding on this Court, they would constitute precedents of persuasive value. Further, he invited our attention to the ‘functional test’ propounded in the case of **Bate v. Priestly**⁹ wherein, in suit for recovery based on a bond/agreement was in issue and the ‘functional test’ was applied to determine the origin of the expression ‘arising out of matrimonial relationship’, which reads as under:-

“Hope J:

In my opinion, these expressions of opinion are to be applied to the words 'arising out of the marital relationship' in para (ca)(i). As it seems to me, what the High Court emphasised in Perlman was that the proceedings in the Supreme Court did not arise out of the marital relationship; the fact that the deed arose out of the marital relationship which had previously existed did not mean that the proceedings arose out of that relationship. The proceedings arose out of the deed and the failure by the defendant to carry out its terms.

It has been submitted for the defendant that there is a much closer relationship in the present case between the deed upon which the plaintiff sued and the orders of the Family Court, and hence it can be properly said that the proceedings arose out of the marital relationship. Counsel for the defendant put every argument before the court to support this submission, but in my opinion it cannot succeed. Indeed one would have thought that a deed of maintenance approved by a Family Court under s 87 would have had a much closer tie to the marital relationship than a deed such as that now sued on. It is true that in the present case the Family Court ordered the payment of the sum of \$50,000 on or before 1 July 1985 by way of property settlement and/or lump sum maintenance, that the plaintiff can still enforce that order by the various means available under the Family Law Act and Regulations, and that the deed was expressly entered into to provide additional remedies for the plaintiff to ensure that payment of that sum. Nonetheless the proceedings arose out of the deed and not otherwise. They did not arise out of the marital relationship which led to proceedings in the Family Court and to the execution of the deed.

⁹(1989) 97 FLR 310



Mahoney J.

The principal argument for Mr Bate was, I think, to the effect that the proceeding to enforce the deed was a 'matrimonial cause' because the proceeding arose out of the deed and the deed arose out of the (former) marital relationship and accordingly the proceeding arose out of the marital relationship. Philosophically, the argument is irrefutable. But the claim of A arising from B arising from C may be traced back to the Creation without ... philosophical error. **In deciding whether, for the particular purpose before it, A is to be seen as arising from C, the test applied by the court is not philosophical but functional:** *State Rail Authority of New South Wales v Codelfa Construction Pty Ltd* (1982) 150 CLR 29 at 40-41. In *Perlman v Perlman*(1984) 155 CLR 474 the High Court indicated how, for the purposes of this legislation, the sequence is to be terminated. I agree with Hope AJA that, upon the approach adopted in that case, the present proceeding does not arise out of the marital relationship and so is not a matrimonial cause.”

ANALYSIS & DECISION:

18. We have bestowed our anxious consideration upon the submissions advanced by the learned counsels for the parties at the Bar as also the learned *Amicus Curiae* and we have gone through the case law cited at the Bar.

19. First things first, we need to have a look at the Preamble to the Family Courts Act, 1984, which reads as under: -

“An Act 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.”

20. A meaningful perusal of the Preamble would show that the underlying objective of the Act is to promote an amicable resolution of disputes relating to marriage and family affairs and the matters connected therewith through conciliation, mediation, counselling and



like measures and thus securing speedy settlement of such disputes. It is but obvious that the impetus of the Preamble is to secure peace and harmony amongst the members of the family and to promote family welfare. This brings us to Sections 7 and 8 of the FC Act, which read as under:

“Section 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 circumstances arising out of a marital relationship;

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.

Section 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 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.”

21. It is pertinent to mention here that the *Explanation* to Section 7(1)(a) and which constitutes a substantive part of the provision itself *vide* clauses (a) to (g) specifies the suits and proceedings over which the Family Court is enabled to exercise its jurisdiction. A glance at that provision would signify that each clause caters to a different situation and while clause (c) provides for jurisdiction of the Family Court in the case of a suit or proceedings between the parties to marriage with respect to the property of the parties or either of them, which in plain and grammatical interpretation means the ‘husband and



wife' since they are the parties to the marriage, in contradistinction thereof, clause (d) confers jurisdiction upon the Family Court in case of a suit or proceeding for an order or injunction in 'circumstances arising out of marital relationship'. Section 8 on the other hand, restricts the jurisdiction of the Courts other than Family Courts to entertain, proceed and adjudicate upon matters in section 7(1) of the FC Act.

22. Before proceeding further in our discourse, it would be appropriate at this juncture to notice the case laws cited at the Bar and examine the relevant principles enunciated therein in an endeavour to appreciate the reasons assigned for conferring or ousting the jurisdiction of Family Courts.

CASES LAW WHERE JURISDICTION CONFERRED ON FAMILY COURTS:

23. Avoiding the temptation to embark on a long legal discourse, it would be apposite to refer to a few decided cases to understand how the law on the subject has evolved. The Kerala High Court in the case of **Leby Issac v. Leena M. Ninan alias Lincy**¹⁰ was presented with a matter wherein the appellant-husband had filed a suit before the Family Courts against his wife, father-in-law and alleged adulterer of his wife as defendant Nos. 1 to 3 respectively, seeking compensation from his wife and father-in-law for allegedly having knowledge even before his marriage that she was having an illicit relationship with the third defendant. In the aforesaid background it was held as follows: -

¹⁰2005 SC OnLine Ker 345



“11. But, a further question arises now. What is meant by the expression, ‘in circumstances arising out of a marital relationship’ used in Explanation (d) to Section 7(1)? Since the above provision refers to ‘marital relationship and not ‘marriage”, will the circumstances adverted to in Explanation (d) confine only to those circumstances which arose during subsistence of marital relationship alone? or, do those include such circumstances which arose surrounding marriage also? Will the expression, ‘arising out of marital relationship taken in only those things which transpired during the marital life and not in or about a marriage? To un-knot these questions, a probe into the meaning of the term ‘circumstances is necessary.

12. The expression, circumstances" means "the surroundings of an act', as per tow Lexicon by P. Ramanatha Aiyar, reprint edition, 1992 It also means the particulars which accompany an act The word "circumstances" is explained in Salter v. State 163 Ga 80, 135 St 408, 409 also as, related or accessory facts, occurrences or things which stand around, or about, which attend upon, which closely precede or follow, which surround and accompany, which depend upon, or which support or qualify principal fact or event, (vide Black's Law Dictionary Forth edition).

13. So, circumstances in relation to a marital relationship will be those particulars which closely precedes, surrounds, accompanies and follows a marital relationship. That means, primarily those can be the marriage itself and the surrounding occurrences in connection with marriage. The main requirement is that such circumstances **must have a direct bearing on marriage**, since the marriage precedes, the existence of origin of a martial relationship. ‘Circumstances’ arising out of a marital relationship are therefore, **‘occurrences or things which stand around or about which attend upon, which closely precede or follow, which surround and accompany, which depend upon, or which support or qualify the principal event’ of a marriage or marital relationship.**

14. The expression ‘in circumstances arising out of marital relationship’ **thus means not only those occurrences which transpired during marital life, but those also include such circumstances, which led to the marriage, which developed thereafter, which took place during marital life, which resulted in breaking down of marriage and also those which ‘closely’ followed as a consequence of all these.** If the intention of legislature was to take in only those occurrences which take place during a ‘marital relationship’, there was no necessity to use the word ‘circumstances’ in explanation (d) to section 7 (1) of the Act. The same purpose could have been achieved if explanation (d) is



worded without the term 'circumstances' also. So, the inclusion of word 'circumstances' in the relevant provision is quite significant and it must have been done to include all such circumstances surrounding, preceding and closely following a marital relationship i.e. the principal event of marriage and the eventualities surrounding the same.

15. So, having understood the requisites of Section 7(1) read with explanation (d) as discussed above, the next question to be dealt with is whether those are satisfied in the case at hand. It is clear from the pleadings in the plaint/petition that the appellant's claim emerged in circumstances arising out of marital relationship between appellant and first respondent. It is alleged in the plaint/petition that respondents 1 and 3 were having illicit licit connections and that this fact was known to his wife's parents, but they suppressed this fact and committed fraud on appellant in solemnizing the marriage.

16. In paragraph 13 of the plaint, it is specifically stated that cause of action to the proceeding arose on the date of engagement of the marriage and on the date of marriage when the first respondent-wife disclosed that the marriage was held against her will, and the date on which the wife made a confession to the plaintiff/appellant regarding the adulterous life at the place where the marriage was solemnized etc. All these are circumstances surrounding, preceding and accompanying a marital relationship.

17. From the averments in the petition/plaint it is evident that suit/petition itself arose because of the marriage, the circumstances which led to the marriage and what transpired during marital life. Those reveal the alleged illicit relationship between respondents 1 and 3, suppression of these facts, subsequent confession made, ensuing breaking down of the marital relationship, defiant conduct of appellant's wife, her failure to discharge marital obligations etc. and the mental agony caused to appellant as a result of all these. Thus, from the facts stated in plaint/petition, it is clear that petition/suit in this case originated in circumstances arising out of a marital relationship.

23. So, the prime question to be asked on institution of a proceeding before Family Court under Section 7(1) read with Explanation (d) of the Act is therefore, **whether the foundation of the claim was a marital relationship and whether the petition and relief emerged in the circumstances closely preceding, surrounding and following a marital relationship.** If the answer is in the affirmative, the Court can entertain the petition. In this particular case that a divorce petition also was pending before the Family Court between the parties. The present proceeding also



arose more or less from the same set of facts and circumstances and hence the lower Court ought to have retained the case in the same Court instead of driving the parties to the ordinary Civil Court. The whole dispute between the parties can be attempted to be settled in the Family Court itself. The couple cannot be deprived of the facilities available in the Family Court to arrive at a quicker settlement of their issues. Looking at the issue from any angle, this is a fit case which ought to have been entertained by the Family Court itself.”

24. Interestingly, the Kerala High Court in the case of **Janaki Amma v. Renuka Sadanandan**¹¹ drew a distinction between a transaction ‘incidentally connected to’ and a transaction ‘inherently arising from’ a marital relationship. The Court opined that the primary factor in determining whether the suit would lie before the Family Court was **whether cause of action is intrinsically linked to marital relationship, and whether the rights and obligations on which the cause of action is based, owe their genesis to the marital relationship**. On an analysis of facts, it was observed that the transaction stemmed clearly from ‘circumstances arising out of a marital relationship’, and therefore the dispute was said to be squarely covered under the purview of the subject provision.

CASE LAW WHERE JURISDICTION OF FAMILY COURT EXCLUDED:

25. In **Mini & v. Sivaram**¹², decided by the Kerala High Court, the father-in-law was claiming proprietary rights in the suit property and sought relief in the nature of possession and mandatory injunction against his widow daughter-in-law and grandchildren. Before the civil

¹¹ (2016) 1 KLJ 346 (DB)

¹²(2020) 6 KLT 44 (DB)



court an objection was taken by the daughter-in-law that the jurisdiction to try such cases would lie with the Family Court. The case was referred to the Family Court, but it held that the Family Court had no jurisdiction. Thereafter the matter went up to the High Court and it was held as under: -

“14....The said proprietary right of the 1st plaintiff cannot be a circumstance that arises out of a marital relationship. Plaintiffs are enforcing their proprietary right. Cause of action is stated to be the forcible eviction of plaintiffs on 6.12.2011. Enforcement of the proprietary right of the 1st plaintiff over any person is not a circumstance arising out of a marital relationship, merely because the person sought to be proceeded against happens to be the daughter-in-law and grandchildren. It is also apposite to bear in mind that the marriage between the son of the plaintiffs and the 1st defendant is not an issue in question. The rights that flow out of the marriage between the 1st defendant and the son of the plaintiffs are not called in question. In such an instance, it cannot be held that the enforcement of the proprietary right of the 1st plaintiff over his daughter-in-law will be a circumstance that closely precedes, surrounds, accompanies and follows a marital relationship. It is not the nomenclature of the relationship that will determine whether a matter falls under Section 7(1) Expln.(d) or not. **Nomenclature of the relationship will be relevant for matters coming under Section 7(1) Expln.(c) while what is relevant for Section 7(1) Expln. (d) is nature of case and the cause of action stated.**”

26. The same High Court in the case of **P.T. Philipose v. Sunil Jacob**¹³, wherein the facts concerned money borrowed by the father-in-law from the son-in-law, with the latter claiming that he had advanced the amount on the ‘insistence of his wife’, it was held that jurisdiction did not lie with the Family Court since every transaction by either of the spouses or by both of them with the in-laws or relatives cannot be viewed as falling within the ambit of the

¹³2021 SCC OnLine Ker 6230



expression ‘in circumstances arising out of marital relationship’. It was observed that there might be a personal or a commercial transaction with either of the spouse or by both with the in-laws or remotely with the family members or relatives of either spouse and these transactions have no nexus with the marriage or marital relationship between the spouses themselves and a mere acquaintance or relationship as amongst the parties is not in itself a decisive factor.

27. In the case of **Vijayalakshmy v. P.K. Jayashree**¹⁴, the Court upon a close scrutiny of facts observed that the transaction between the parties was not even remotely connected with the marriage and marital relationship since the loan was given solely on the basis of confidence and faith, thus it was held that cause of action for realization of money from the respondents i.e., the daughter and son-in-law by the appellant would exist independently and would not go to the Family Court as it was in the nature of a purely civil dispute and relief could be sought in the ordinary Civil Court.

28. In the case of **Harjyot Singh v. Manpreet Kaur**¹⁵, this Court held that a suit filed by the husband against the wife for recovery of damages for defamation and harassment despite the marital status of the parties would not automatically confer jurisdiction upon the Family Court. In **Pearl Chesson v. Sean Lawrence**¹⁶, a civil suit was filed by the wife against the husband and mother-in-law seeking permanent injunction from restraining the defendants from dealing

¹⁴ 2018 SCC OnLine Ker 23326

¹⁵2019 SCC OnLine Del 11716

¹⁶ 2018 SCC OnLine Bom 21156



with a property alleged to be jointly financed by the married couple and it was held that the marital status of the parties was irrelevant and suit was *qua* the property which was owned as an individual and jurisdiction of civil Court was not barred. Likewise, in the case of **Rakhi v. Jayendra**¹⁷, the Bombay High Court while recognising that FC Act is a special legislation, held that it being conferred the status of a special legislation cannot be construed to bring within its domain what was not intended and expressed so. The suit filed by the father-in-law seeking injunction to restrain the daughter-in-law from entering into the property, of which he claimed to be absolute owner, was held to be not transferable to the Family Court.

JURISDICTION OF CIVIL COURTS IN MATRIMONIAL MATTERS:

29. In the backdrop of the above decisions, which have assigned diverse reasoning for inclusion or exclusion of the jurisdiction of the civil court or for that matter the Family Courts, let us get to the heart of the subject matter before us. Undeniably, the jurisdiction to entertain and adjudicate upon the kind of suits or legal proceedings provided *vide* the Explanation to section 7(1)(a) of the FC Act, were being dealt by the Civil Courts prior to the enforcement of the FC Act. At this juncture, it becomes imperative to refer to Section 9 *sans* the Explanations, of the Code of Civil Procedure, 1908¹⁸ which provides as under: -

“9.Courts to try all civil suits unless barred. —The Courts shall

¹⁷ 2008 (5) Mh. L.J. 98

¹⁸CPC



(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.”

30. In an interesting case decided by this Court titled **Vidyanidhi Dalmia v. Nilanjana Dalmia**¹⁹, a husband filed a suit against wife for restraining her from entering into the matrimonial home. The suit was dismissed under Order VII Rule 11 of the CPC, while holding that said right of wife to enter into matrimonial home emanates not only under common law but also stands affirmed by the Protection of Women from Domestic Violence Act, 2005. It is pertinent to mention that the said decision was given at a time when Family Courts had not come into existence in Delhi²⁰. In the cited case, with regard to Section 9 of the CPC, it was held as under: -

“21. Under Section 9 of the CPC, the civil courts have jurisdiction to try and decide all civil causes, except those excluded. The courts in India, have dealt with different nuances of this issue, over the last six decades. Far back, in *Secretary of State v. Mask & Co.* (AIR 1940 PC 105) the question was considered in connection with Sea Customs Act (1878). It was held that:

“It is settled law that the exclusion of the jurisdiction of the civil courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied.

The *Constitution Bench in Dhulabhai v. State of M.P.*, (AIR 1969 SC 78) said that:

“Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

¹⁹2008 SCC OnLine Del 371

²⁰The first Family Court in Delhi was established in Dwarka Complex of the District Court vide Notification No. F.6/9/2001-Judl./Suptlaw/533-535 dated 23.04.2009

<<http://it.delhigovt.nic.in/writereaddata/egaz20118121.jpeg>>



eventualities and disputes that may arise in a matrimonial relation. In the case of **Darshan Singh v. Ram Pal Singh**²¹, the Supreme Court observed in the said context as under:

“24...Neque leges neque senatus consulta ita scribe possunt ut omnes casus qui quandoque inciderint comprehendatur; sed sufficet ea quæ pleramque accident contineri. Neither laws nor Acts of a Parliament can be so written as to include all actual or possible cases; it is sufficient if they provide for those things which frequently or ordinarily happen. What is material is to see the expressed objects and reasons and the language used...”

32. It is no longer *res integra* that the question as regards exclusion of jurisdiction of the civil court is to be considered having regard to the scheme of the FC Act as also the objects that the enactment seeks to subserve. Whenever there is an express bar on the jurisdiction of the civil court, it becomes imperative to examine the nature of the Act and the provision of the adequate remedies can be relevant but cannot be considered to be the sole ground to sustain the ouster of the jurisdiction of a civil court. In **M. Hariharasudhan v. R. Karmeam**²², it was observed by the Supreme Court that *“we say no more but reiterate that the plea of bar to jurisdiction of Civil Court must be considering having regard to the contention raised in the plaint, which is to be read as whole and for that purpose the averments must disclose cause of action and the reliefs which are sought must be considered in its entirety.”* The jurisdiction of civil court or exclusion thereof, cannot and must not depend only on few averments made in the plaint or petition and/or all the reliefs claimed

²¹1992 Supp (1) SCC 191

²²2019(10) SCC 94



thereupon.

33. Incidentally, the Supreme Court in the case of **Samar Kaur Roy v. JharnaBera**²³ dealt with a case filed by the husband for declaration under Section 34 of the Specific Relief Act, 1963 to the effect that the defendant was not his legally wedded wife and holding that the said suit did not lie under Section 7 and 8 of the FC Act, it was observed as under: -

“16. On a reading of the aforesaid propositions, it is clear that the examination of the remedies provided and the scheme of the Hindu Marriage Act and of the Special Marriage Act show that the statute creates special rights or liabilities and provides for determination of rights relating to marriage. The Acts do not lay down that all questions relating to the said rights and liabilities shall be determined only by the Tribunals which are constituted under the said Act. Section 8(a) of the Family Courts Act excludes the Civil Court's jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act, where the suit is to annul or dissolve a marriage, or is for restitution of conjugal rights or judicial separation. It does not purport to bar the jurisdiction of the Civil Court if a suit is filed under Section 34 of the Specific Relief Act for a declaration as to the legal character of an alleged marriage. *Also as was pointed out, an exclusion of the jurisdiction of the civil courts is not readily inferred [see context]. Given the line of judgments referred to by the High Courts, and given the fact that a suit for declaration as to legal character which includes 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, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law.*” ***{Italics portion emphasized}***

CONCLUSION:

34. In view of the aforesaid discussion, we unhesitatingly hold that the term ‘marital relationship’ has to be interpreted *de hors* the

²³(2017) 9 SC 591



meaning and import of the term ‘family’. The expression, ‘marital relationship’ when bifurcated brings out that the word ‘marital’ has been defined as ‘of or relating to marriage or relations between husband and wife’²⁴ while ‘marriage’ has been defined as a ‘formal union of a man and a woman, typically as recognised by law, by which they become husband and wife’²⁵.

35. *A fortiori* every suit or legal proceeding when brought before the Court must invariably explain the ‘cause of action’, which is the fundamental requirement of law in any given case, and it must invariably include the narration of the ‘circumstances’ that arise out of marital relationship in order to confer jurisdiction upon the Family Court. There is no gainsaying that the expression ‘cause of action’ is not defined under any statute and the Supreme Court in the case of **Kusum Ingots & Alloys Ltd. v. Union of India**²⁶ held that it was to mean “*every fact which would be necessary for the plaintiff to prove, if traversed in order to support his right of judgment i.e., the essential facts that must be proven by a party to obtain a decree, which are material to the case*”.

36. The interplay as between the expressions “cause of action” and the term “circumstances” in the context of the subject provision must be deciphered in the follow manner; firstly, the averments in the plaint must explain the ‘cause of action’ for instituting a suit or legal proceedings for injunction; and secondly that this ‘cause of action’ is

²⁴Oxford English Dictionary, 10th Edition (OUP 1999),

²⁵ibid.

²⁶(2004) 6 SCC 254



one which falls within the jurisdiction of the Family Courts. The cause of action, in order to bring the case under the subject provision and so as to confer jurisdiction upon the Family Court must encapsulate a tangible averment that the dispute is one which has an intrinsic nexus with the marital relationship. The circumstances should be of such a nature that it is demonstrable that the dispute is closely emanating from and surrounded by such matters which are integral to the marital relationship. Mere existence of a marital relationship between the litigating parties howsoever tangential cannot be the basis or the foundation for the proceedings being brought before a Family Court. We hasten to add that if we allow the interpretation that has been placed to the subject provision in the case of *Avneet Kaur*, it is likely to open a Pandora's box, which would risk inclusion of all disputes as between the parents and their married children and even siblings within its ambit.

37. We are in agreement with the submission of learned *Amicus* that while the subject provision may encompass a range of 'circumstances', including those preceding, surrounding, influencing, and emanating from a marital relationship, the emphasis is on a direct connection between the 'cause of action' and the 'marital relationship'. He has rightly urged that prioritising the cause of action in determining the correct jurisdictional forum also ensures that family courts can maintain their specialized focus on matrimonial matters, avoiding a situation of becoming overburdened with cases unrelated to marital relationships, which could *inter alia* lead to overreach of jurisdiction and a potential straining of resources.



38. Although research on foreign jurisprudence by the Learned *Amicus Curiae* is very impressive and we do not restrain ourselves in borrowing words of wisdom from such source, we need to appreciate that the ethos of family and/or marital relationship that exist in our country are distinct from those jurisdictions owing to our peculiar social, educational, regional, and cultural factors. However, unhesitatingly the ‘functional test’ which was propounded in the case of *Bate (supra)* is one that provides necessary wisdom and suffice it to state that while a dispute as amongst those who are in a matrimonial relationship may be traced back to marriage or matrimony, the judicial scrutiny would envisage and evolve objective parameters to ascertain the origin of the dispute and what lies at the core of the cause of action. The provisions of the FC Act are such that it provides for a relaxed procedural machinery for adjudication of disputes, and does away with the technicalities of the Indian Evidence Act, 1872 as well the CPC, so as to encourage and create an environment conducive for reconciliation or amicable resolution of disputes between the parties.

39. A careful perusal of the provisions of the FC Act would show that the scheme of this Act is such that it provides for certain distinct measures for settlement of disputes in matrimonial cases, for instance, Section 4(3) provides for preference to be given for appointment of women as Judges of the Family Courts; Section 5 provides for framing of Rules for the association of institutions or organizations engaged in social welfare or professionally engaged persons for assistance of the Family Courts so as to promote family welfare; Section 9 involves the spirit of providing opportunity to the parties to



arrive at a settlement in an amicable manner so much so that is specifically empowering the Family Courts to adjourn the proceedings for such period, as it may deem fit, to enable the parties to effect a settlement, the underlying purpose of which is to provide a cooling off period so as to enable the parties to take an informed decision about their fate; Section 10(3) empowers the Family Courts to lay down its own procedure in addition to the procedure prescribed under the Civil Procedure Code, 1908 and the Criminal Procedure Code, 1973 in order to arrive at a settlement in respect of subject matter of the suit or proceedings or find out the truth of the fact alleged by one party and denied by others. The Family Courts are also empowered to hold *in camera proceedings* vide Section 11 and Section 13 takes away the right to legal representation in proceedings before the Family Courts. Section 14 enables the Court to receive any evidence in the nature of any report statement, document, information, or matter that may, in the opinion of the Family Court effectively deals with a dispute irrespective of whether the same is relevant or admissible under Indian Evidence Act, 1972; Section 15 empowers the Family Courts to record a memorandum of the substance of what the witness deposes instead of recording the testimony of witnesses at length, as normally is the practice in the Civil Courts; Section 19 provides for an appeal against judgment and order of the Court to the High Court within 30 days of such orders and the matters are mandated to be heard by a Bench of two or more judges in the appeal.

40. The relaxation of procedural and evidentiary safeguards which otherwise attach to proceedings before civil courts might lead to a



situation where the substantive rights of third parties would be compromised, especially in disputes involving complex factual and/or legal issues. It is also noteworthy that even where Family Courts may exercise jurisdiction over matters ordinarily within the purview of civil courts, the actual exercise of pronouncing and enforcing orders within the scope of such purported jurisdiction may be fraught with practical and legal difficulties.

41. We find much weight in the submissions of the learned *Amicus Curiae* that in cases incidental to or not directly related to matrimonial issues, such flexibility might severely prejudice the third parties inasmuch as parties legitimately expect a legal framework that strictly adheres to procedural and evidentiary rules for ultimate and effective resolution of disputes.

42. Thus, in our considered opinion, the question whether the claim laid before the Family Court or the Civil Court falls within the ambit of the expression “in circumstances arising out of marital relationship” must be examined and answered on an identification of the foundation of the claim, the underlying basis for the institution of the suit or the proceedings. Thus, there must be an intrinsic and unwavering connection between the proceeding and the marital relationship. This would necessarily entail the court analysing the cause of action and its relation with the marital relationship- the interrelation and interdependence between the two being determinative of the question. An assertion of a particular suit or proceeding being liable to be tried exclusively by the Family Court would succeed only if it is established that there is a direct nexus between the ‘cause of action’



and the ‘marital relationship’. A cause of action which is shown to exist independent of the marital relationship would clearly take the matter outside the purview of the Family Court. What needs to be emphasised is that a matter would fall under the purview of Family Court only where the circumstances have a direct bearing on the marriage. It is not the relationship of the various parties which could be said to be conclusive. What needs to be ascertained and identified is the fundamental basis for the institution of the action. That underlying basis must have an inefaceable link to the marital relationship. The marital relationship must constitute the point of origin for the action in order to bring it under the exclusive jurisdiction of the Family Courts.

IMPLEADMENT OR NON IMPLEADMENT OF HUSBAND

43. Insofar as the issue of impleadment or non-impleadment of the husband or the defendant/son of the plaintiff, is concerned, suffice it to state that joinder, non-joinder or mis-joinder of of the husband/ son of the plaintiff does not determine the maintainability of the suit between the plaintiff mother-in-law and defendant daughter-in-law before the Civil Court. Avoiding a long academic discourse, suffice to refer to the observations of the Supreme Court in the case titled **Ramesh Hirachand Kundanmal v. Municipal Corporation of Greater Bombay**²⁷, wherein there was a detailed discussion on issue of ‘necessary party’ and ‘proper party’ under Order I Rule 10 of the CPC. The Court under paragraph (6) explained the distinction between

²⁷ (1992) 2 SCC 524



a ‘necessary party’ and a ‘proper party’, which has been reiterated by the Apex Court in a catena of cases²⁸, and it was held as under:-

“ 6. ...The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.”

ANSWERING THE REFERENCE:

44. Accordingly, the present reference is answered as under:

(a) Whether a suit for possession/injunction filed by the in-laws of the defendant or either of them, claiming themselves or either of them to be the exclusive owner of the property of which the possession is sought or with respect to which injunction is prayed for from or against the defendant/daughter-in-law, is to be tried exclusively by the Family Court established under the Act, and the jurisdiction of the Civil Court is barred?

Answer to Question (a):

Each of the categories under Section 7(1)(a) of the Act are undoubtedly civil in nature. Since the principal question therein relates to a civil right, there is no gainsaying that when claim is made about ownership rights and relief is sought in the nature of possession or injunction and/or damages, such legal rights are to be considered *de hors* the matrimonial relationship. The proprietorship rights or ownership rights to immovable property are not integral to maintaining the matrimonial relationship. Such rights may be claimed as against a third person or anyone in the family or for that matter somebody connected through matrimonial relationship.

Indeed, when it comes to a dispute as between mother-in-law and/or father-in-law on the one side and their estranged daughter-in-law on the other side, the claim of proprietorship or ownership of a property and thereby seeking relief in the nature of possession

²⁸ Kasturi v. Iyyamperumal (2005) 6 SCC 733; Vidur Impex Traders (P) Ltd. v. Tosh Apartments (P) Ltd. (2012)8 SCC 384 *et al.*



and/or injunction by its very nature incidentally indicates a matrimonial relationship, but such relationship is not a foundational fact so as to lay a claim. Such relationship is not at the core of the dispute but exists independently in civil law, and thus, the Family Courts do not exercise exclusive jurisdiction over such disputes and as an inevitable corollary the jurisdiction of Civil Courts is not barred.

(b) Whether the impleadment or non-impleadment of the husband or the defendant/son of the plaintiff has an effect on the maintainability of such a suit before a Civil Court?

Answer to Question (b):

In light of our answer to Question (a), the answer to this question would necessarily have to be in the negative. The mere impleadment or non-impleadment of the husband or the defendant/son of the plaintiff would not be determinative of the question relating to the jurisdiction of the Family Court. The joinder or non-joinder of parties would have to be considered in light of the plethora of case law which already exists on that issue. Ultimately and irrespective of whether a husband is joined or not, the jurisdiction of the Family Court would have to be ascertained based on the cause of action and whether that is founded on the marital relationship or has a mere casual or incidental connection to the cause.

45. We find ourselves unable to either subscribe or concur with the view expressed in *Avneet Kaur* for if the view as expressed in *Avneet Kaur* were to be accepted, it would clearly amount to an incorrect interpretation and understanding of the subject provision and the expression ‘circumstances arising out of marital relationship’. The said decision, in our considered opinion, lays out the contours of that expression too broadly and fails to accord due consideration to the facet of ‘cause of action’, which is of seminal importance. Thus, the said judgment stands overruled. We find ourselves in agreement with the views expressed in *Manita Khurana* and *Meena Kapoor*.

46. We place on record our deepest appreciation for the assistance provided by learned *Amicus Curiae* Dr. Amit George, Advocate.

