

## **K.A. Abdul Jaleel vs T.A. Shahida on 10 April, 2003**

**Equivalent citations: AIR 2003 SUPREME COURT 2525, 2003 AIR SCW 2710, (2003) 4 JT 4 (SC), 2003 (4) JT 4, 2003 (2) BLJR 1103, 2003 (2) JKJ 451, 2003 SCC(CRI) 810, 2003 (3) LRI 109, 2003 (4) SCC 166, 2003 (3) SLT 201, 2003 (3) SCALE 785, 2003 (4) ACE 494, (2003) 5 ALLINDCAS 5 (SC), 2003 (5) ALLINDCAS 5, 2003 (2) ALL CJ 1466, (2003) ILR(KER) 3 SC 327, 2003 (7) SRJ 483, (2004) 1 RAJ LW 6, (2003) 2 KHCACJ 339 (SC), (2003) 3 ALLMR 754 (SC), (2003) 2 MARRILJ 197, (2003) 3 JCR 16 (SC), 2003 (2) UJ (SC) 1026, 2003 UJ(SC) 2 1026, 2003 (2) MARR LJ 197, (2003) 3 GUJ LR 2444, (2003) 2 GUJ LH 487, (2003) 4 MAH LJ 7, (2004) MATLR 202, (2003) 3 MPLJ 524, (2003) 3 PAT LJR 84, (2003) 3 RAJ LW 461, (2003) 3 SUPREME 369, (2003) 3 RECCIVR 645, (2003) 3 SCALE 785, (2003) 2 UC 1309, (2003) 3 JLJR 107, (2003) 3 EASTCRIC 36, (2003) 3 ANDHLD 114, (2003) 6 INDLD 74, (2003) 51 ALL LR 402, (2003) 4 CAL HN 104, (2003) 3 CIVLJ 34, (2003) 2 MAD LJ 202, (2003) 2 HINDULR 295, (2003) 2 KER LT 403, (2003) 4 MAD LW 1, (2003) 1 WLC(SC)CVL 654, (2003) 1 CAL LJ 643, (2003) 1 DMC 765, (2003) 2 ALL WC 1665, (2003) 8 ALLINDCAS 207 (MAD), (2003) 4 BOM CR 498**

**Author: S.B. Sinha**

**Bench: Chief Justice, S.B. Sinha, Ar. Lakshmanan**

CASE NO.:

Appeal (civil) 3322 of 2003

PETITIONER:

K.A. Abdul Jaleel

RESPONDENT:

T.A. Shahida

DATE OF JUDGMENT: 10/04/2003

BENCH:

CJI., S.B. Sinha & AR. Lakshmanan.

JUDGMENT:

**J U D G M E N T** [Arising out of SLP (Civil) No.8996 of 2001] S.B. SINHA, J :

Leave granted.

Whether the Family Court has jurisdiction to adjudicate upon any question relating to the properties of divorced parties arises for consideration in this appeal. The said question arises out of a judgment and order dated 20.03.2001 passed by a Division Bench of the Kerala High Court dismissing an appeal from an order passed by the Family Court, Ernakulam, dated 22.07.1998 in O.P. No.343 of 1996.

The parties to this appeal were married on 03.01.1988. A female child was born out their wedlock on 11.10.1988. Allegedly, after the birth of the second child, owing to deterioration in the health of the respondent herein, the relationship of the parties became strained. The respondent contended that at the time of marriage, a large amount in cash as also gold ornaments were given. From the cash amount the appellant herein purchased a property described in Schedule 'A' of the petition on 01.02.1988. The balance amount was kept by the appellant. He allegedly further sold the gold ornaments of the respondent and out of the sale proceeds he purchased the property described in Schedule 'B' of the petition.

In respect of properties an agreement marked Exhibit A1 was executed by the parties, in terms whereof it was agreed that the properties purchased from the aforesaid amount will be transferred in the name of the respondent by the appellant. The appellant herein pronounced Talaq on 01.11.1995 after his relationship with the respondent became strained. In terms of the said agreement dated 17.09.1994, the respondent filed a suit marked O.S. No.85 of 1995 in the Family Court on 08.12.1995. The appellant in his written statement alleged that the said agreement was signed by him under threat and coercion and further contended that several documents purported to have been executed by him in support thereof were also obtained by applying force.

Both the parties examined themselves as also proved various documents in the said suit before the Family Court.

The Family Court by a judgment and order dated 22.07.1998 decreed the suit in favour of the respondent herein upon arriving at a finding that she was the absolute owner of the Schedule 'A' property as also 23/100 shares in the Schedule 'B' property.

Aggrieved thereby and dissatisfied therewith, the appellant preferred an appeal before the High Court which was marked as MFA No.196 of 1999. By reason of the impugned judgment dated 20.03.2001, the said appeal has been dismissed.

Mr. Haris Beeran, learned counsel appearing on behalf of the appellant, would submit that having regard to the provisions contained in Section 7 of the Family Courts Act, 1984, the Family Court had no jurisdiction to decide a dispute as regards properties claimed by a divorced wife. The learned counsel would urge that the jurisdiction exercisable by any Family Court being between the parties to a marriage which would mean parties to a subsisting marriage. In support of the said contention strong reliance has been placed on a judgment of a Division Bench of the Allahabad High Court in *Amjum Hasan Siddiqui vs. Smt.Salma B.* [AIR 1992 (Allahabad) 322] and *Ponnavolu Sasidar vs. Sub-Registrar, Hayatnagar and Others* [AIR 1992 (A.P.) 198].

Mr. T.L.V. Iyer, learned Senior Counsel appearing on behalf of the respondent, on the other hand, would contend that the matter is covered by an inter-parties judgment passed by a Division Bench of the Kerala High Court which is since reported in [1997 (1) KLT 734]. As the appellant herein did not question the correctness of the said judgment, he cannot be permitted to turn round and now challenge the jurisdiction the Family Court.

The Family Courts Act 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. From a perusal of the Statement of Objects and Reasons, it appears that the said Act, inter alia, seeks to exclusively provide within the jurisdiction of the Family Courts the matters relating to the property of the spouses or either of them. Section 7 of the Act provides for the jurisdiction of the Family Court in respect of suits and proceedings as referred to in the Explanation appended thereto. Explanation (c) appended to Section 7 refers to a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them.

The fact of the matter, as noticed hereinbefore, clearly shows that the dispute between the parties to the marriage arose out of the properties claimed by one spouse against the other. The respondent herein made a categorical statement to the effect that the properties were purchased out the amount paid in cash or by way of ornaments and the source of consideration for purchasing the properties described in Schedules 'A' and 'B' of the suit having been borne out of the same, the appellant herein was merely a trustee in relation thereto and could not have claimed any independent interest thereupon. It is also apparent that whereas the agreement marked as Exhibit A1 was executed on 17.09.1994, the appellant pronounced Talaq on 01.11.1995. The wordings 'disputes relating to marriage and family affairs and for matters connected therewith' in the view of this Court must be given a broad construction. The Statement of Objects and Reasons, as referred to hereinbefore, would clearly go to show that the jurisdiction of the Family Court extends, inter alia, in relation to properties of spouses or of either of them which would clearly mean that the properties claimed by the parties thereto as a spouse of other; irrespective of the claim whether property is claimed during the subsistence of a marriage or otherwise.

The submission of the learned counsel to the effect that this Court should read the words "a suit or proceeding between the parties to a marriage" as parties to a subsisting marriage, in our considered view would lead to miscarriage of justice.

The Family Court was set up for settlement of family disputes. The reason for enactment of the said Act was to set up a court which would deal with disputes concerning the family by adopting an approach radically different from that adopted in ordinary civil proceedings. The said Act was enacted despite the fact that Order 32A of the Code of Civil Procedure was inserted by reason of the Code of Civil Procedure (Amendment) Act, 1976, which could not bring about any desired result.

It is now a well-settled principle of law that the jurisdiction of a court created specially for resolution of disputes of certain kinds should be construed liberally. The restricted meaning if ascribed to Explanation (c) appended to Section 7 of the Act, in our opinion, would frustrate the object wherefor

the Family Courts were set up.

In Amjum Hasan Siddiqui's case (*supra*) an application was filed in terms of Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986. The question before the Allahabad High Court arose as to whether a Family Court could deal with such a dispute. It was held that no application could lie before the Family Court as the claim under Section 3 of the 1986 Act would neither be a suit nor a proceeding within the meaning of Section 7 of the Family Courts Act inasmuch as such an application could only be moved before the First Class Magistrate having requisite jurisdiction as provided for in the Code of Criminal Procedure. The said decision, in our opinion, cannot be said to have any application whatsoever in the instant case.

In Smt. P. Jayalakshmi and Another vs. V. Revichandran and Another [AIR 1992 AP 190], the Andhra Pradesh High Court was dealing with a case under Section 125 of the Code of Criminal Procedure. It was held that although the matrimonial proceeding was moved before the Family Court, the same could not have provided for a legal bar for the wife and the minor child for instituting a proceeding under Section 125 of the Code of Criminal Procedure at Tirupathi where they were residing; as both the rights are separate.

As indicated hereinbefore, Balakrishnan, J. (as His Lordship then was) speaking for a Division Bench in a matter arising out of a preliminary issue on the question of jurisdiction held that the dispute over properties between parties to a marriage cannot be confined to the parties to a subsisting marriage. We agree with the said view. The said decision being inter- parties and having attained finality would operate as *res judicata*.

The further contention of the learned counsel appearing on behalf of the appellant is that as the respondent had already filed an application under Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986, wherein an amount of Rs.1,33,200/- was awarded in her favour, the impugned proceeding was not maintainable.

The two proceedings are absolutely separate and distinct. The impugned judgment does not show that the said question was even argued before the High Court. As indicated hereinbefore, the factual issue involved in this appeal revolved round as to whether Exhibit A1 was obtained by applying force or undue influence upon the appellant. The said contention has been negated by both the Family Court as also the High Court.

We, therefore, find no merit in this appeal which is dismissed with costs. Counsel's fee assessed at Rs.5,000/- (Rupees Five thousand only).

+ 5 3488 2003