

Mary Thomas vs Dr. K.E. Thomas on 6 October, 1989

Equivalent citations: AIR1990MAD100, I(1991)DMC47

Author: S. Mohan

Bench: S. Mohan

ORDER

S. Ramalingam, J.

1. Civil Suit Diary No. 20871 of 1988 was filed by the appellant (wife) against the respondent, her husband, on the Original Side of this Court, praying for a judgment and decree for a permanent injunction against the respondent (defendant) from interfering with her possession and enjoyment of certain property, for a declaration that the power of attorney executed by her to the respondent is unenforceable, for accounts for the amounts specified in Schedule 'A' to the plaint and for return of all the documents specified in the plaint Schedule 'C', the documents being title deeds, etc. By orders dated 24-11-1988, Abdul Hadi, J. held that the suit is not maintainable in entirety and the plaint was directed to be returned for presentation before the Family Court.

2. The learned Judge held that the expression, 'District Court' in S. 7 of the Family Courts Act, 1984 (Act of 1984), hereinafter referred to as the 'Act', includes the High Court, particularly because of S. 2(e) of the Act. He further held that Explanation (c) to S. 8 of the Act would be attracted because this is a suit or proceedings between the parties to a marriage with respect to the property of the parties or of either of them and therefore, only the Family Court would have jurisdiction. It is the correctness of the above order that is challenged in this appeal and in view of the importance of the question and also because there is already a decision of a Division Bench of this Court reported in Mr. Patrick Martin and Mrs. Regine Martin, rep. by Power Agent Sr. Theresa Thomas appellants, holding that the jurisdiction of the High Court is taken away and entrusted to the Family Court, the Full Bench is constituted to render a final verdict on the scope and ambit of S. 7 and S. 8 of the Act and on the question whether the jurisdiction exercised by the High Court under Letters Patent is in any manner affected by reason of the abovesaid provisions in the Act.

3. Before proceeding further it is necessary to refer to the judgment of Abdul Hadi, J. rendered in Petition Diary No. 18070 of 1988. In the matter of the Minor Rekha, reported in (1989) 103 Mad LW 241. After referring to S. 7 of the Act which states that the Family Court shall 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 S. 8 which states that after a Family Court is established for any area no District Court or any subordinate civil Court shall, in relation to matters falling under S. 7 exercise any jurisdiction and every suit or proceeding of such nature as explained in sub-sec. (1) of S. 7 shall

stand transferred to the Family Court on the date on which it is established, and after referring to the decision of the Division Bench of this Court in *Daily Calender Supplying Bureau v. United Concern*, the learned Judge held that the terms 'District Court' includes the High Court and therefore, the jurisdiction exercised so far by this Court under Cls. 17 to 35 of the Letters Patent is ousted and given over to the Family Court. This order was taken up in appeal and was confirmed in O.S.A. No. 186 of 1988, though for different reasons.

4. The question for consideration before us is, whether after the constitution of the Family Court for the Madras area, the Original Jurisdiction of the High Court in respect of matters that may fall under the Explanation to S. 7 of the Act is ousted or not?"

5. A reference to certain provisions of the Letters Patent is necessary. Cls. 11 to 21 deal with Extraordinary Original Civil Jurisdiction, and Insolvency Jurisdiction; Cls. 22 to 30 deal with Criminal Jurisdiction; Cl. 31 deals with the exercise of jurisdiction outside the ordinary place where the High Court sits; Cls. 32 and 33 deal with Admiralty and Vice-Admiralty Jurisdiction and Cl. 34 deals with Testamentary and Intestate Jurisdiction. The ouster of the jurisdiction exercised by the High Court on its Original Side under the provisions of the Letters Patent cannot be readily inferred unless there is express provision in any enacted law taking away such jurisdiction. Under Art. 225 of the Constitution of India the pre-existing jurisdiction of the High Court is preserved subject of course to the provisions of any valid law that may be made. Does the Act contain any provision militating against the exercise of jurisdiction on the Original Side of this Court in respect of matters falling under the Explanation to S. 7 of the Act and does the Act contain any express provision taking away such jurisdiction vested in the High Court?

6. In support of the contention that this Court has no jurisdiction, Mr. G. Subra-maniam, learned senior Counsel submitted that the words "any district Court" occurring in S. 7 of the Act would include the Original Side of this Court when it exercises jurisdiction in respect of matters falling under the Explanation to S. 7. He referred to the definition of the word "district" in sub-section (4) of S. 2 of the Civil Procedure Code which states that "district" means the local limits of the jurisdiction of principal-Civil Court of original Jurisdiction (hereinafter called a "District Court") and includes the local limits of the ordinary civil jurisdiction of High Court. He, therefore, contended that so far as Madras District is concerned, the Judge exercising jurisdiction on the Original Side of this Court presides over a district Court. He further relied on the judgment of a Division Bench of this court reported in "*Daily Calendar Supplying Bureau v. United Concern*", wherein in paragraph 6 it was observed as follows:

"Clauses 11 and 12 of the Letters Patent confers ordinary original civil jurisdiction to the High Court, over the Presidency Town of Madras. Therefore, the area of the Presidency Town will be a District as defined in S. 2(4) of the Civil Procedure Code and when the High Court exercises its original civil jurisdiction over the city limits, it can be deemed to be a District Court, in those cases where resort to the definition in S. 2(4) of the Civil Procedure Code, is permissible for the purpose of fixing jurisdiction. S. 9 of the Civil Procedure Code gives power to every civil Court to try all suits of a civil nature excepting suits of which their cognisance is either expressly or

impliedly barred, and the explanation to that section says that a suit in which the right to property or to an office is contested in a suit of civil nature. It is well recognised that copyright is property and therefore, a suit seeking reliefs for infringement of copyright is a suit of a civil nature. If such infringement occurs, and the cause of action for a suit based on the infringement arises within the area of the ordinary original civil jurisdiction of the High Court, that Court can be deemed to be a District Court as per definition in S. 2(4) of the Civil Procedure Code and will have power to try the suit. Our attention was drawn to a case of the Calcutta High Court *Kedarnath Mondal v. Ganesh Chandra Adak*, (1908) 12 Cal WN 446, which arose under the Inventions and Designs Act, 1888. That Act contained a specific clause that a District Court had the meaning assigned to that expression by the Code of Civil Procedure. After construing Cl: 2(4) of the Civil Procedure Code, Fletcher, J. came to the conclusion that when a High Court -exercises its ordinary original civil jurisdiction it comes within the definition of District Court as contained in the Civil Procedure Code".

7. Mr. G. Subramaniam then referred to the Statement of Objects and Reasons of the Act which is as follows:

"Statement of Objects and Reasons:

Several associations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of procedure and evidence should be eliminated. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes, concerning the family the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the Courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes".

He contended that a new procedure has been devised as enshrined in the Act and rigid rules of procedure and evidence had been eliminated and therefore, it would be an-anachronism to retain the proceedings on the original Side of this High Court even after the constitution of the Family Court. He referred to Cl. 44 of the Letters Patent and contended that the provisions of the Letters Patent are subject to the legislative powers of the State and they may be in all respects amended and altered. It is his contention that the provisions of the Letters Patent are not immutable and are certainly amenable to the new law enacted, namely, the Family Courts Act. He referred to the decision of this Court reported in *Official Assignee of Madras v. Ramasamy Iyengar* (1912) 23 Mad

LJ 726, where it was observed:

"It appears from the clauses of the Letters Patent which I have cited that the High Court in the exercise of its original civil jurisdiction is merely a local Court and the general principle of construction applicable to an enactment conferring such a jurisdiction is that it must clearly appear that a particular case falls within the provisions of the enactment, and that the jurisdiction should not be extended by implication".

His contention is that the High Court being a local Court exercising Original Civil Jurisdiction, should be equated to a "District Court".

8. Learned counsel then referred to *Penguin Books Ltd., England v. M/s. India Book Distributors*, where a Division Bench of the Delhi High Court laid down as follows (Para 40):

"After the conclusion of arguments we asked parties' counsel to address us on the question of jurisdiction in view of the fact that S. 62 of the Act (Copyright Act) requires suit or other civil proceedings in respect of the infringement of copyright to be instituted in the district Court having jurisdiction. We heard arguments. The consistent view of the Courts in India is that the expression 'district Court' will include the High Court having original jurisdiction (See S. 2(4), Civil P.C. and *Bakshi Locchan Singh v. Jatherdar Santosh Singh*, *The Tata Oil Mills Co. Ltd. v. Hansa Chemical Pharmacy*, ILR (1979) 2 Delhi 236, *D.C.S. Bureau v. United Concern*, and *Maheshwar Swain v. Bidyut Prabha Art Press*,)."

9. The last of the decisions cited by Mr. G. Subramaniam, learned senior counsel, is reported in *Faxlehussein v. Yusufally*, where it was held that even if the Court had jurisdiction to entertain the suit as filed, if by reason of subsequent events the Court has lost jurisdiction to entertain or try the suit, the Court will not be justified in dealing with the suit with reference to circumstances as they existed at the date of the institution of the suit, but must proceed to decide the dispute on the footing that if the suit had been filed at the later date, the Court would have been incompetent to grant the reliefs in respect of the properties and of the persons who are not within the limits of the jurisdiction of the Court."

10. Thus, in sum and substance, the contention of the respondent is that the provisions of the Letters Patent vesting jurisdiction on the Original Side of the High Court to try certain matters which may fall under the Explanation to S. 7 of the Act, have been altered or amended or abridged by reason of the enactment of the Act, that the Family Court would have exclusive jurisdiction to try such suits, that even if such a matter is pending in the High Court on its Original Side, it should stand transferred to the Family Court by virtue of S. 8 of the Act and that the word "district Court" occurring in S. 7 of the Act would include the High Court which is only a local Court when it exercises original side jurisdiction.

11. As against the above contentions, Mr. A. C. Muthanna, learned counsel appearing for the appellant, with brevity and clarity contended that the definition of "district" occurring in sub-sec. (4) of S. 2 Civil Procedure Code would be of no assistance in the absence of a definition of the term "district Court". It is true that Madras is a district for judicial purposes and the Original Side of the High Court is a Court of Ordinary Original Civil Jurisdiction over that district. But that does not and would not change the High Court into a district Court. He states that the nearest definition of the district Court occurs in S. 3(17) of the General Clauses Act, 1897, which defines a District Judge as follows:

"District Judge shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction".

Relying upon this definition, learned counsel for the appellant would contend that when the High Court exercises original civil jurisdiction, the High Court Judge shall not be deemed to be a District Judge and consequently, the High Court cannot be equated to a District Court. He further submitted that even on first principle a High Court which is superior Court than a district Court should not be equated to a district Court. He relied on Hyat Mahomed v. Shaikh Mannu, AIR 1927 Cal 290 where a Division Bench of the Calcutta High Court held as follows:

"Though the word "District" in the Civil P.C. does include the local limits of a High Court in its ordinary Original Civil Jurisdiction, still it is not legitimate to construe the words "District Court" wherever they appear to mean and include a High Court in its ordinary Original Civil Jurisdiction".

This Division Bench expressly dissented from the view expressed in Kedarnath Mondal v. Gancsh Chandra Adak, (1908) 12 Cal WN 446 on which reliance had been placed by Abdul Hadi, J.-- in which Fletcher, J. stated thus, (vide page 447):

"Section 4, sub-sec. (9) of the Inventions and Designs Act of 1888 says that a District Court has the meaning assigned to that expression by the Code of Civil Procedure. Now let us look at the interpretation in Cl. 2 of the Code of Civil Procedure. It says:-- "District" means the local limits of the jurisdiction of the principal Civil Court of original jurisdiction (hereinafter called a District Court) and includes the local limits of the Ordinary Original Civil Jurisdiction of a High Court, and then it says that "every Court of a grade inferior to that of a District Court and every Court of Small Causes shall for the purposes of this Code be deemed to be Subordinate to the High Court and the District Court". Now, a High Court as used in the Code of Civil Procedure means the highest civil Court of appeal, In my opinion, when a High Court exercises its Ordinary Original Civil Jurisdiction, it comes within the definition of a District Court as contained in the Civil Procedure Code."

Referring to Kedarnath MondaPs case, (1908) 12 Cal WN 446, supra, the Division Bench in Hyat Mahomed's case, AIR 1927 Cal 290 supra, held as follows :--

"It is said that the application is competently brought before this Division Bench by virtue of the terms of S. 23 of the Code of Civil Procedure. In our opinion, S. 23 of the Code of Civil Procedure does not govern this case so as to make this Division Bench a proper forum to which such an application can be made. It is quite true that the word 'District' in the Civil P.C., includes not merely the local limits of a High Court in its ordinary original civil jurisdiction. That is a very different thing indeed from saying that the words 'District Court', wherever they appear in the Code of Civil Procedure mean and include a High Court in the exercise of its ordinary original civil jurisdiction. If that is what was intended to be laid down by Mr. Justice Fletcher in the case of *Kedarnath Mondal v. Ganesh Chandra Adak*, (1908) 12 Cal WN 446, I do not agree with it."

Reference was also made to *S.B.S. Jayam & Co. v. Gopi Chemical Industries, India*, (1977) 1 Mad LJ 286, where it was held as follows:

".....According to the learned counsel for the defendant, the suit for infringement of a registered trade mark is filed in this Court in its capacity as a District Court as defined under the Trade and Merchandise Marks Act, 1958 (hereinafter referred to as the Act) and that, therefore, it is S. 20 of the Code of Civil Procedure that is applicable and not Cl. 12 of the Letters Patent. This is not correct.

12. In S. 2(1)(c) of the Act, it is stated that "District Court" has the meaning assigned to it in the Code of Civil Procedure, 1908. In the said Code of the terms "District Court" as such is not defined but the word :

"'District' is defined as the local limits of the jurisdiction of a principal civil Court of original jurisdiction hereinafter called a 'District Court'. It is significant to note that the same definition makes it clear that the local limits of the ordinary civil jurisdiction of a High Court is also included in the definition of the word 'District'. Therefore under the Code, the local limits of the ordinary original jurisdiction of this Court is a district. But that does not mean this Court becomes a District Court."

13. In the light of these submissions it is necessary to consider in what context and in what circumstances some of the decisions cited already held that the High Court when it exercises jurisdiction on the Original Side could be equated to or could be called a District Court. The earliest of the decisions cited is reported in *Kedarnath Mondal's case*, (1908) 12 Cal WN 446 supra. There a suit was filed on the Original Side of the Calcutta High Court to restrain the defendants from infringing the specification filed by the plaintiff under S. 8 of the Inventions and Designs Act. In that suit, a defence was taken, which inter alia fell within the scope of S.29 of the Inventions and Designs Act. S. 29 of that Act states that an inventor may institute a suit in the District Court against any person who, during the continuance of an exclusive privilege acquired by him.....makes, sells or uses the invention without his license, or counterfeits or imitates it. Sub-sec. (2) states that the suit shall not be defended upon the grounds of any defect or insufficiency of the specification of the invention, or upon the grounds that the original or any subsequent application relating to the invention or the

original or any amended specification, contains a wilful or fraudulent misstatement, or upon the ground that the invention is of no utility. When the defendant raised a contention which would fall under sub-sec. (2) of S. 29 of the said Act, it was submitted on behalf of the defendant that S. 29 applied only to suits filed in a "District Court", that the expression did not include High Court, and that, consequently, the restrictions to defence mentioned in that section did not apply to that case. It is in the course of considering this defence, the Court referred to S. 30, which vested jurisdiction in the High Court to declare an exclusive privilege in respect of an invention to be specified in the rule has not been acquired and the final conclusion was as follows:

".....I think, on the whole, that the legislature intended that these defences should not be raised in an action for infringement of an exclusive privilege but must be raised under Ss. 30 and 31 when the various objections mentioned before fall."

It was in this view, the Court held that the defendants cannot raise these defences which would fall under sub-sec.(2) of S.29. Although in this judgment there is an observation that when a High Court exercises its Ordinary Original Civil Jurisdiction it comes within the definition of a District Court as mentioned in the Civil Procedure Code, in a later judgment of the same High Court reported in Hyat Mahomed's case, AIR 1927 Cal 290 supra, the Division Bench expressly dissented from the view expressed by Fletcher, J. in Kedarnath Mondal's case, (1908) 12 C WN 446 supra. We have also given our anxious consideration to this question and we are of the firm view that the reasoning of Fletcher, J. cannot be supported when he intended to mean that whenever the High Court exercises jurisdiction on the Original Side it acts as a District Court.

14. The decision reported in *Official Assignee of Madras v. Ramasamy Iyengar*, (1912) 23 Mad LJ 726 supra, cited by Mr. G. Subramaniam, is also not of much assistance for the purpose of this case. All that this decision states is that the High Court when it exercises its Original Civil Jurisdiction is a local Court. There cannot be two opinions on this issue.

15. In *Kuppuswami Nayagar, in re*, ILR 53 Mad 237 : (AIR 1930 Mad 779) an order of reference for hearing before a Bench was made by Kumaraswami Sastri, J. in the following circumstances: A petition for the grant of a succession certificate under Part X of the Indian Succession Act was filed on the Original Side of the High Court. In the Indian Succession Act though it was provided that a petition would lie before the District Court yet there was no definition of a District Court and the learned Judge after referring to the definition of "District Judge" in the General Clauses Act, felt that while dealing with the definition of "District Judge" the same interpretation should be given to the words "District Judge" in Chapter IV of the Act, which refers to the grant of probates and letters of administration, as in Part X which gives the District Judge jurisdiction to grant succession certificates. It was in this view the learned Judge observed that if the definition of "District Judge" excludes the High Court altogether, the High Court cannot grant probate or letters of administration under the Indian Succession Act. The learned Judge noticed the fact that in the definition of "District Judge" given in the General Clauses Act, the proviso expressly excluded the High Court in the exercise of its Ordinary or Extraordinary Original Civil Jurisdiction. The learned Judge felt that there was no justification for enabling persons in the mofussil to obtain succession certificate on payment of nominal Court-fee while at the same time denying such facility to those in Madras. In

the concluding portion of the Order of Reference, Kumaraswami Sastri, J. observed as follows (at Pp. 781-82 of AIR):

"For the reasons given by me, I am of opinion that having regard to the Indian Succession Act of 1925, which has repealed both the Probate and Administration Act and the Succession Certificate Act, and incorporated the provisions of these Acts in the body of the Indian Succession Act and has omitted to define the words "District Judge" leaving us to fall back on the definition of "District Judge" in the General Clauses Act, the High Court is a "District Court" when it does not exercise its Ordinary or Extraordinary Civil Jurisdiction conferred by Cls. 11 to 18 of the Letters Patent."

However, the reference to the Bench became unnecessary because Act 18 of 1929 was passed which amended the Succession Act by the insertion of the definition of "District Judge" as a Judge of a principal Civil Court of Original Jurisdiction.

16. The facts in *The Daily Calendar Supplying Bureau's case*, supra, which is strongly relied in support of the judgment of Abdul Hadi, J. may have to be noticed. Alleging infringement of copyright under S. 62 of the Copyright Act, the plaintiff sought for an injunction, damages, etc. While defending the case on merits the defendants raised a plea that the High Court at Madras has no jurisdiction to try the suit because the defendants resided outside the territorial jurisdiction of the High Court and also because no part of the cause of action had arisen within the limits of the jurisdiction of this Court. A learned single Judge held that the High Court had jurisdiction because the plaintiff, who had complained of the infringement resided and carried on his business within the local limits of the original jurisdiction of the High Court. The reliefs of injunction and damages were granted. On appeal by the defendants, the Division Bench extracted S.62 of the Copyright Act, 1957, which was as follows (at p. 383):

"Jurisdiction of Court over matters arising under this Chapter.-- (1) Every suit or other civil proceeding arising under this Chapter in respect of the infringement of copyright in any work or the infringement of any other right conferred by this Act shall be instituted in the District Court having jurisdiction.

(2) For the purpose of sub-sec. (1), a 'District Court' having jurisdiction shall notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, include a District Court within the local limits of whose jurisdiction, at the time of the institution of the suit or other proceeding, the person instituting the suit or other proceeding or, where there are more than one such person, any of them actually and voluntarily resides or carries on business or personally works for gain". The learned Judges referred to the prior Act, viz., Indian Copyright Act, 1914, which in S. 13 expressly provided that civil proceedings relating to infringement of copyright shall be instituted in the High Court or the Court of the District Judge. But in the Copyright Act of 1957, the word 'High Court' was omitted. It was contended in that case that in the absence of any reference in the definition in

the Copyright Act, 1947, to the Code of Civil Procedure one has to necessarily fall back upon the definition of District Judge found in the General Clauses Act and consequently, the jurisdiction of the High Court would be excluded: But having regard to the fact that for the Madras district, the City Civil Court has only a limited pecuniary jurisdiction, if interpretation is given by excluding the jurisdiction of the High Court to cases under the Copy right Act, "an anoma-lous result would follow that when a case of infringement of copyright arises within the area of the original jurisdiction of the High Court, there will be no Tribunal competent to try the suit. No doub't, if such an anomalous result ensues because of a real lacuna in the legislative provisions, the Court cannot step in to fill up that lacuna. Therefore, it was necessary to consider whether such a lacuna really exists, or whether the existing provision is not sufficient to give jurisdiction to the High Court.

17. Placed in that situation, the Division Bench proceeded to consider the question whether for finding out the meaning of the terms "District Court" it will be proper to resort to the definition in the General Clauses Act of the term 'District Judge' and concluded that it should not be done. Thereafter, relying upon the judgment of the Calcutta High Court in Kedarnath Mondal's case, (1908) 12 Cal WN 446 supra, the Bench held that the term "District Court" in S. 62(1) of the Copyright Act should be given the same meaning as in S. 2(4) Civil Procedure Code. The Bench summed up their conclusion as follows:

"Summing up, it appears to us that in the present case there is no warrant for applying the definition of District Judge in the General Clauses Act, for finding out the jurisdiction of District Court under S. 62 of Act XIV of 1957 especially when it will lead to the anomalous result of a plaintiff aggrieved against the infringement of the copyright arising in the Madras City limits being left without a forum for obtaining his relief. Secondly, the terms of S. 62 especially sub-sec. (2) imply that the definitions of District and District Court in the Civil Procedure Code will apply for the purpose of determining the jurisdiction under the Copyright Act. We hold that the High Court has jurisdiction to try this suit".

18. From a reading of the above case and the conclusion arrived at, it can easily be seen that only because of the fact that an anomalous situation would have otherwise arisen, which will leave the plaintiff aggrieved against infringement of copyright arising in the Madras City limits without any remedy, the Division Bench came to the rescue for giving an enlarged definition of the term "District Court" limited for the purpose of the Copy-"right Act by including the High Court in the exercise of its original jurisdiction. This case, therefore, can hardly be an authority for the general proposition that the High Court when it exercises its original jurisdiction over its local area should be equated to a District Court. The law laid down in The Daily Calendar Supplying Bureau's case, supra, should be confined to the facts of that case.

19. In S.B.S. Jayam and Co. v. Gopi Chemical Industries, India (1977) 1 Mad.LJ 286 supra, which was a case arising under the Trade and Merchandise Marks Act of 1958, on the Original Side of this Court, N. S. Ramaswami, J. has laid down the law correctly by stating that the term "District Court"

would not include the High Court and the fact that the local limits of the ordinary original jurisdiction of this Court is a district would not mean that this Court becomes a District Court. The learned Judge also reiterated the law that in suits filed on the Original Side it will be the Original Side Rules and the provisions of the Letters Patent that will have application.

20. On a consideration of the relevant provisions of law and the decisions which have been cited, we are clearly of the opinion that the jurisdiction of the High Court on its Original Side is not ousted by any of the provisions contained in the Act and the High Court shall continue to exercise the jurisdiction vested in it under the Letters Patent and all other laws, notwithstanding the provisions of S. 7 and S. 8 of the Act. In this view, therefore, we hold that the decision of Abdul Hadi, J. in Patrick Martin. In the matter of the Minor Rekha, (1989) 103 Mad LW 241, and confirmed by the Division Bench in O.S.A. No. 186 of 1988 and reported in Patrick Martin Mr. etc. Appellants, is no longer good law.

21. We answer the Reference as follows:

"After the constitution of the Family Court for the Madras area, the original Jurisdiction of the High Court in respect of matters that may fall under the Explanation to S. 7 of the Act is not ousted and the High Court can continue to exercise its jurisdiction notwithstanding the coming into force of the Family Courts Act, 1984".

Consequently, O.S.A. No. 21 of 1989 will stand allowed and the suit will be numbered and retained on the file of the Original Side of this Court for disposal in accordance with law. There will, however, be no order as to costs. Appln. No. 2463 of 1989 in O.M.S. No. 16 of 1988, Appln. No. 2464 of 1989 in O.M.S. No. 4 of 1988 and Appln. No. 2466 of 1989 in O.P. No. 29 of 1988 will stand dismissed.

22. Order accordingly