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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

THURSDAY, THE 11TH DAY OF JUNE 2026 / 21ST JYAISHTA, 1948

MAT.APPEAL NO. 194 OF 2026

AGAINST THE ORDER DATED 08.12.2025 IN IA 4/2025 IN OP

NO.18 OF 2018 OF FAMILY COURT, THIRUVANANTHAPURAM

APPELLANT/RESPONDENT/PETITIONER IN OP:

BY ADVS.

SRI.D.KISHORE

SMT.MEERA GOPINATH

SRI.R.MURALEEKRISHNAN (MALAKKARA)

SRI.ANANT KISHORE

RESPONDENTS/PETITIONERS/RESPONDENTS 2 AND 3 IN OP:



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BY ADVS.
SRI.ARUN V.G.
SRI.R.HARIKRISHNAN (KAMBISSERIL)
SRI.NEERAJ NARAYAN

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
11.06.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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"CR"

JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

This Mat. Appeal preferred at the instance of the petitioner in O.P.No.18 of 2018 before the Family Court, Thiruvananthapuram, impugns the order dated 08.12.2025 in I.A.No.4 of 2025 in O.P.No.18 of 2018. The brief facts necessary for the disposal of this Mat. Appeal are as follows:

The O.P.No.18 of 2018 before the Family Court, Thiruvananthapuram, was filed by the appellant before us claiming that she is the wife of late . It was her case before the court below that the 1st respondent was a lady having some illicit relationship with the deceased and that respondents 2 and 3 are the children born in that illicit relationship. The prayers in the Original Petition were threefold, namely (1) to declare that she is the legally wedded wife of ; (2) to partition the petition scheduled properties and (3) allow her to realise the mesne profits from the scheduled properties.



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2. It would appear that initially, the respondents were set ex-parte. However, immediately after the affidavit-in-chief was filed by the appellant, the respondents appeared before the court and filed an application for setting aside the order that set them ex-parte. In the said application filed under Order IX Rule 7 of the CPC, the respondents also challenged the maintainability of the Original Petition itself, contending that the provisions of Section 7(1) of the Family Courts Act, 1984 would not come to the rescue of the appellant herein and that the court below ought to return the Original Petition to the appellant for presentation before the civil court of competent jurisdiction.

3. The court below, after hearing the parties, found force in the contention of the respondents herein and allowed their application and directed return of the Original Petition to the appellant for presentation before the civil court having jurisdiction. As already noticed, it is being aggrieved by the said order that the appellant is before us through this Mat. Appeal.

4. We heard Sri. Kishore D., the learned counsel for the appellant and Sri. Arun V.G., the learned counsel appearing on behalf of the respondents.



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5. Sri. Kishore D, the learned counsel for the appellant, would contend that the provisions of Section 7 of the Family Court Act, 1984 are unambiguously clear when they state that the Family Court shall have jurisdiction *inter alia* in suits and proceedings where a declaration as to the validity of a marriage or as to the matrimonial status of any person is sought for. Distinguishing the judgment of the Supreme Court in **Kasthuri R. and others v. M. Kasthuri and others** [2018 KHC 2535] and placing reliance on the judgment of the Supreme Court in **Balram Yadav v. Fulmaniya Yadav** [2016 KHC 6310], it is the submission of Sri. Kishore that even in cases where the Original Petition instituted before the Family Court is at a point in time when a person alleged to be the husband is no more, the Family Court will have jurisdiction to decide the issue of validity of the marriage or matrimonial status of the petitioner before it. He also takes us through the provisions of Sections 8 and 20 of the Family Courts Act, 1984, to contend that inasmuch as the jurisdiction of the Family Court, in the matters expressly stated in Section 7 of the 1984 Act, has been carved out from the jurisdiction otherwise exercised by the civil courts, the court below erred in relegating the appellant to the civil court of



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competent jurisdiction.

6. Per contra, it is the submission of Sri. Arun V. G., the learned counsel appearing for the respondents, that the impugned order of the court below does not require any interference. Pointing to the decision in **Kasthuri R. (supra)** that was followed by this Court in **Brinda and others v. Muktha K.N.** [2022 (5) KHC 719], he would submit that a perusal of the statement of objects and reasons of the Family Courts Act, 1984 would clearly bring out the intention behind the introduction of the special provisions under that Act to deal with family disputes. In particular, it is pointed out that the emphasis under the Family Courts Act is for conciliation and achieving socially desirable results for settlement of family disputes and to avoid an adherence to rigid rules of procedure and evidence while going about the same. The 59th report of the Law Commission had also stressed that in dealing with disputes concerning the family, the court ought to adopt an approach radically different from that adopted in normally civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. Since the provisions under the Family Courts Act have the effect of excluding the jurisdiction of the civil



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courts they should be strictly construed so that only such disputes as answer to the description of 'family disputes' are relegated to the specialised Forum created under that Act. Drawing our attention to Explanation (b) to Section 7(1) of the Family Courts Act, 1984, he points out that it is only a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person that would be excluded from the jurisdiction of the civil court. The 'matrimonial' status of a person, he argues, is one that has to be determined *in praesenti* and cannot be done when the other person to the marriage is not alive. It would follow therefore that a proceeding for a declaration as to validity of a marriage or as to matrimonial status of a person can only be in a *lis* to which both the parties to the marriage are alive and made parties. Since in the instant case, the person alleged to be the husband of the appellant had died on 03.12.2016, much before the date of institution of the Original Petition before the Family Court, the impugned order of the court below cannot be legally assailed.

7. On a consideration of the rival submission, we find force in the submission of the learned counsel for the respondents. It is apparent from a reading of the judgment of the Supreme Court in



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Kasthuri R. (supra) that where a dispute arises after the death of the person to whom both the parties to the dispute claim to be married, that dispute cannot be viewed as a 'family dispute' which requires to be adjudicated by the Family Court. Such a dispute would retain the character of a civil dispute *simpliciter* that has to be adjudicated by a civil court of competent jurisdiction. In the instant case, a mere glance at the prayers sought for in the original petition filed before the Family Court, would reveal that it was filed with the primary object of getting rights in the property of the deceased Sasikumar and that the declaration of marriage sought for was merely to bolster the appellant's principal claim for a share in the said property.

8. We also find that the legislature has used the words 'declaration of validity of a marriage' together with 'matrimonial status' in Explanation (b) to S.7 (1) with the intention to carve out only disputes connected with a subsisting relationship of marriage ie. a relationship *in praesenti*, for adjudication before a specialised Forum dealing with family disputes. A dispute that arises at a point in time when one of the parties to the marriage, whether actual or alleged, is no more, cannot be presented before a Forum that is



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tasked with adjudicating disputes that arise in a subsisting relationship between live persons. As observed by the Court in **Kasthuri R. (supra)**, objects and reasons behind the enactment of the Act would suggest that the reason for constitution of Family Courts is for settlement of family disputes, if possible, by pre-litigation proceedings and if the dispute cannot be settled, the same has to be adjudicated by the adoption of a process which is different from what is adopted in ordinary civil proceedings. Read together with the main objective behind the enactment of the Statute which is to preserve and save the institution of marriage, it is clear that an adjudication of family disputes by the specialised Forum under the Family Courts Act can be only in cases where both the parties to the marriage are alive and are made parties to the lis requiring adjudication by the Forum. It is this criteria that serves to distinguish the decision in **Balram Yadav (supra)** relied upon by the learned counsel for the appellant.

The upshot of the above discussion is that we find no reason to interfere with the impugned order of the court below. The Mat. Appeal fails and is accordingly dismissed. However, we make it clear that insofar as the appellant was *bona fide* pursuing her remedy



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before the Family Court, Thiruvananthapuram, the civil court that the appellant now approaches, shall exclude the time spent by the appellant pursuing the OP before the Family Court, and the appeal before this court, while computing the limitation period in the suit that is presented before it.

Sd/-

**DR. A.K.JAYASANKARAN NAMBIAR
JUDGE**

Sd/-

**PREETA A.K.
JUDGE**

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