

CREF-1-2025 (O&M) [1]

2025:PHHC:141433



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

CREF-1-2025 (O&M)  
Date of decision: 13.10.2025

Shakuntla and another

...Petitioners

Versus

Suresh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Kewal Krishan, Advocate for the petitioners.

Mr. Harshit Nain, Advocate (through V.C.) and  
Mr.Nitin Bhanwala, Advocate and  
Mr.Bhavesh Ola, Advocate  
for respondent-Suresh.

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**VIKAS BAHL, J. (ORAL)**

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**BACKGROUND OF THE CASE**

1. The present civil reference has been placed before this Court in pursuance to the reference order passed by the Principal Judge, Family Court, Fatehabad dated 10.07.2025.

2. Section 113 of Code of Civil Procedure, provides that any Court may state a case and refer the same for the opinion of the High Court, and the said Section further empowers the High Court to make any such order thereon as it thinks fit. Further Order XLVI Rule 1 CPC also provides that where, before or on hearing of a suit etc., any question of law or usage having the force of law arises on which the Court trying the suit etc. entertains a reasonable doubt, then the Court may draw up a statement of facts of the case and the point on which doubt is entertained and refer such statement with its own opinion on the point for decision of the High Court. Section 113 of CPC and relevant portion of Order XLVI of CPC are reproduced hereinbelow:-

***“113. Reference to High Court.—Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:***

*[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or*



*inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.*

*Explanation.—In this section, “Regulation” means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State.]*

#### *ORDER XLVI*

#### *REFERENCE*

*1. Reference of question to High Court.—Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.”*

It is under the abovesaid provisions that reference order has been made by the Principal Judge, Family Court, Fatehabad.

3. A perusal of the reference order dated 10.07.2025 passed by the Principal Judge, Family Court, Fatehabad would show that opinion of the High Court is sought on two legal questions which are formulated hereasunder:-

- i) Whether the First Appellate Court i.e., Additional District



Judge, Fatehabad was competent to hear the appeal and the cross-objection, challenging the judgment and decree dated 18.04.2022 passed by the Civil Judge (Junior Division), Fatehabad vide which the suit filed by the plaintiffs under Section 3(b)(ii) of the Hindu Adoption and Maintenance Act was partly decreed?

- ii) Whether once the judgment and decree dated 18.04.2022 has been held to be passed without jurisdiction in view of the provisions of the Family Courts Act, 1984 (hereinafter to be referred as “the 1984 Act”), then the evidence recorded and proceedings conducted before the Civil Judge, subsequent to 03.09.2019 could be taken into consideration or not by the Family Court to whom the case was ultimately transferred?

4. On 01.08.2025, this Court had passed the following order:-

*“Present : By order.*

*\* \* \* \**

*Order 46 Rule 3 CPC, which is relevant, is reproduced hereunder:*

***“3. Judgment of High Court to be transmitted, and case disposed of accordingly.—*** *The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.”*

*A perusal of the above Rule shows that same provides*



*that the parties in case they appear and desire to be heard, are required to be heard before the reference is answered.*

*Apparently, since the present case has been put up in pursuance of a reference order passed by the Principal Judge, Family Court, Fatehabad, thus in all likelihood the parties would not be aware of the date fixed in the present case and the fact that it is listed for hearing today. Accordingly, the Registry is directed to issue notice to the plaintiffs/petitioners as well as the defendants/respondents, whose names and addresses are mentioned on the first page of the order of reference dated 10.07.2025, for 02.09.2025.*

*To be taken up at 1:45pm.*

*1<sup>st</sup> August 2025”*

5. In pursuance of the said order, Mr. Kewal Krishan, Advocate has appeared for the plaintiff-wife and Mr. Harshit Nain, Advocate has appeared for defendant-husband and have assisted the Court in adjudicating the present matter.

#### **UNDISPUTED FACTS OF THE CASE**

6. Before this Court opines on the abovesaid two questions, it would be relevant to refer to the undisputed facts of the present case, which are detailed hereinafter in a chronological order:-

i) **04.12.2017**

A suit under Section 3(b)(ii) of the Hindu Adoption and Maintenance Act was filed by the plaintiffs i.e., Smt. Shakuntla, wife of Suresh Kumar and Pooja, daughter of Suresh Kumar against Suresh Kumar, Chief Medical Officer and State of Punjab before the Civil Court i.e., Additional Civil Judge (Senior Division), Fatehabad. Pauper

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application was also filed along with the same. Prayer in the suit is reproduced hereinbelow:-

*“Suit under section 3(b)(ii) of Hindu Adoption and Maintenance Act for awarding the marriage expenses thereby directing the defendant No.1 to make the payment of Rs.10 Lac for the marriage of the plaintiff No.2 as lumpsum amount for the marriage of the plaintiff No.2, which is proposed to be solemnized in the month of March 2018, by way of attachment of salary and GPF, PPF/EPF Account of the defendant No.1 and creating charge over it, who is employed in General Hospital Sangrur District Sangrur under the defendants No.2 and 3 and further suit for permanent injunction thereby restraining the defendant No.1 from forcibly and illegally getting release from his GPF, PPF account etc for any other purpose and for using the same and the defendants No.2 and 3 be restrained from releasing any amount from the service account to the defendant No.1 except the purpose of marriage of the plaintiff No.2. On the basis of oral and documentary evidence of every description.”*

ii) **16.07.2018**

Permission was granted to the plaintiffs to pursue the instant suit as a pauper and accordingly the suit was registered.

iii) **01.05.2019**

The trial Court, after recording the fact that there were no chances of amicable settlement, framed the issues.

iv) **06.08.2019**

The evidence of PW1-Pooja was recorded and evidence of PW2-Shakuntla was partly recorded and the case was deferred for cross-



examination for 11.09.2019.

v) **03.09.2019**

The Family Court at Fatehabad was established by this Court vide endorsement no.695 Gaz.I/VI.F.8 dated 03.09.2019 and Ms.Aarti Singh, Additional District and Sessions Judge, Fatehabad was posted as Principal Judge, Family Court at Fatehabad.

vi) **05.09.2019**

The District and Sessions Judge, Fatehabad, passed an order dated 05.09.2019 to the effect that all cases relating to family matters as provided under the Family Courts Act, 1984 pending in various Courts were withdrawn from the said Courts and were transferred to the Court of Principal Judge, Family Court, Fatehabad, for disposal in accordance with law. The Ahlmads were directed to send the case files, complete in all respects to the transferee Court immediately. Accordingly, the Civil Courts ceased to have jurisdiction to entertain and try the abovesaid cases.

..... Admittedly, the file in question, although was required to be sent to the Principal Judge, Family Court, Fatehabad, was not sent and the trial continued.

vii) **11.09.2019**

One PW i.e., PW-2 Shankuntla was fully examined.

viii) **05.10.2019**

PW-3 Raj Kumar and PW-4 Vidyarati were examined.

ix) **05.11.2019**



PW-5 Rajbir Singh was partly cross-examined and his further cross-examination was deferred.

x) **30.11.2019**

PW-7 Harish was examined.

xi) **29.02.2020**

PW-5 Rajbir Singh was fully examined and evidence of the plaintiff was closed.

xii) **02.08.2021**

DW-1 Suresh was examined.

xiii) **03.09.2021**

Evidence of the defendant was closed after tendering the documents Ex.D1 and D2.

xiv) **10.03.2022**

Application filed by the plaintiff for additional evidence to produce the marriage card in additional evidence was allowed subject to payment of costs.

xv) **18.04.2022**

The suit filed by the plaintiff was partly decreed by the Civil Judge (Jr.Div.), Fatehabad. The relevant portion of the said judgment is reproduced hereinbelow:-

*“3. Relief.*

*The plaintiffs are entitled to relief of sum of Rs.3,38,421/- from the defendant no.1. No interest shall be awarded on the said sum as it is not commercial transaction.*

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*Announced in open Court  
18.04.2022*

*Civil Judge (Jr.Divn.),  
Fatehabad.  
(UID No.HR-0563)*

*Note:- All 15 pages of this judgment have been duly checked and signed by me.*

*Civil Judge (Jr.Divn.),  
Fatehabad  
(UID No.HR-0563)”*

xvi) **16.05.2022**

Notice issued in the Civil Appeal filed by the husband-Suresh Kumar against the judgment and decree dated 18.04.2022 by the Ist Appellate Court i.e., Additional District Judge, Fatehabad.

Xvii) **23.09.2022**

Cross objections filed by the plaintiffs.

xviii) **24.01.2023**

An application was filed for disposal of the appeal on the ground of lack of jurisdiction as the judgment and decree of the Civil Judge (Jr.Div.), Fatehabad was without jurisdiction in view of the provisions of Sections 7 and 8 of the Family Courts Act, 1984.

xix) **25.07.2023**

The operation of the judgment and decree dated 18.04.2022 was stayed till further orders by the District Judge, Fatehabad.

xx) **08.05.2025**

The Ist Appellate Court i.e., the Additional District Judge, Fatehabad allowed the appeal filed by the appellant-husband and the cross objections filed by the plaintiffs were disposed of and the judgment of the Civil Judge (Jr.Div.), Fatehabad, was set aside and the suit filed by

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the plaintiffs was sent to the Court of Principal Judge, Family Court, Fatehabad for disposal in accordance with law. The relevant portion of the said judgment is reproduced hereinbelow:-

“RELIEF:

*15. As a sequel to the findings on Point for Determination, the appeal filed by the appellant is allowed with no order as to costs and the cross objections filed by respondents No.1 & 2 are disposed off with no order as to costs, **the impugned judgment and decree dated 18.04.2022 passed by the Court of Ms. Uditia, the then learned Civil Judge (Junior Division), Fatehabad are set aside and the suit filed by the respondents No.1 & 2 against the appellant is sent to the Court of learned Principal Judge, Family Court, Fatehabad for disposal of the suit filed by respondents No.1 & 2 under Section 3(b)(II) of Hindu Adoption and Maintenance Act as per law. The parties are directed to appear in the Court of learned Principal Judge, Family Court, Fatehabad on 19.05.2025. Memo of costs be prepared accordingly. Trial Court record complete in all respect alongwith copy of judgment be sent to the learned Principal Judge, Family Court, Fatehabad well before the date fixed. Appeal file be consigned to record room after due compliance.***

*Pronounced in the Open Court:*

*08.05.2025.*

*(Amit Garg)  
Additional District  
Judge, Fatehabad.  
(UID No.HR0162)”*

xxi) **10.07.2025**

Reference order passed by the Principal Judge, Family Court at Fatehabad.



7. This Court would now opine upon the two questions which have been referred for the opinion of this Court and have been formulated in the earlier part of this Order.

8. **OPINION REGARDING QUESTION NO.(i)**

**Whether the First Appellate Court i.e., Additional District Judge, Fatehabad was competent to hear the appeal and the cross-objection challenging the judgment and decree dated 18.04.2022 passed by the Civil Judge (Junior Division), Fatehabad vide which the suit filed by the plaintiffs under Section 3(b)(ii) of the Hindu Adoption and Maintenance Act was partly decreed?**

9. Counsel appearing for the defendant (husband) as well as for the plaintiff (wife) have stated that they had filed the appeal and cross-objections before the Ist Appellate Court, as it was the said Court which was competent to hear the appeal / cross objections, in which challenge was made to the judgment and decree dated 18.04.2022 passed by the Civil Judge (Jr.Div.), Fatehabad. It was further pointed out that the order dated 08.05.2025 passed by the Ist Appellate Court i.e., the Additional District Judge, Fatehabad has not been challenged further and has attained finality. It is a matter of settled law and procedure that the appeal against the judgment and decree passed by the Court would lie to the Court which is authorized to hear the appeals from the decision of the said Court. Thus, the maintainability of the appeal would be dependent upon the Court which had decided the case and the Court which is authorized to hear the appeals from the decision of the said Court which decided the case. To exemplify, if a District Consumer Forum entertains and adjudicates a criminal case with respect to which the said District Consumer Forum has no jurisdiction, then,



the appeal from the said decision of the District Consumer Forum would lie before the State Commission and would not lie before the Sessions Court, although the District Consumer Forum has, by wrongly entertaining a criminal case, decided the same.

10. In the present case, it is not in dispute that the civil suit which was instituted in the year 2017 and was registered in the year 2018 was decided by the Civil Judge (Jr.Div.), Fatehabad. It is also not in dispute that the appeal and the cross objections against the said judgment and decree were filed before the Ist Appellate Court. The said appeal was filed in view of Section 96 of the Code of Civil Procedure, 1908, which provision is reproduced hereinbelow:-

*“96. **Appeal from original decree.**—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction **to the Court authorized to hear appeals from the decisions of such Court.***

*(2) An appeal may lie from an original decree passed ex parte.*

*(3) No appeal shall lie from a decree passed by the Court with the consent of parties.*

*[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed [ten thousand rupees].]”*

A perusal of above provision would show that an appeal would lie from every decree passed by any Court exercising original jurisdiction to



the Court authorized to hear appeals from the decision of such Court. Indisputably, the Ist Appellate Court i.e., the Additional District Judge, Fatehabad was the Court which was authorized to hear appeals from the judgment and decree passed by the Civil Judge (Jr.Div.), Fatehabad while exercising original jurisdiction. Thus, in the said circumstances, the appeal and the cross-objections have been rightly entertained by the Ist Appellate Court and the judgment of the Ist Appellate Court i.e., Additional District Judge, Fatehabad, deciding the said case and holding the judgment and decree dated 18.04.2022 to be without jurisdiction cannot be stated to be either a nullity or having been passed without jurisdiction and thus, the first question which arises for the opinion of this Court is answered accordingly and it is held that the Ist Appellate Court i.e., the Additional District Judge, Fatehabad, was competent to hear the appeal and the cross objections challenging the judgment and decree dated 18.04.2022 passed by the Civil Judge (Jr.Div.), Fatehabad.

**11. OPINION REGARDING QUESTION NO.(ii)**

**Whether once the judgment and decree dated 18.04.2022 has been held to be passed without jurisdiction in view of the provisions of the Family Courts Act, 1984, then the evidence recorded and proceedings conducted before the Civil Judge, subsequent to 03.09.2019 could be taken into consideration or not by the Family Court to whom the case was ultimately transferred?**

12. From the abovesaid detailed facts, it is clear that the Family Court at Fatehabad was established on 03.09.2019 and on 05.09.2019, the District and Sessions Judge, Fatehabad had passed an order transferring all the cases, as were required under Section 7 and 8 of the Family Courts Act,



1984 to the Principal Judge, Family Court, Fatehabad. Till 03.09.2019, the evidence of one PW i.e., PW-1 was recorded and the evidence of second witness i.e., PW-2 was partly recorded. It is after 03.09.2019 that the evidence of remaining plaintiff witnesses, including cross-examination of PW-2, was recorded and the evidence of the defendant was also recorded subsequent to the said date. The question that arises for consideration is as to whether the evidence recorded and the proceedings conducted subsequent to 03.09.2019 can be taken into consideration or not by the Family Court to whom the matter has been transferred for final adjudication.

13. Section 8 of the Family Courts Act, 1984 provides that where a Family Court has been established for any area, then no District Court or any subordinate Civil Court referred to in sub Section (1) of the Section 7 shall, in relation to such area, have or exercise any jurisdiction in respect to any suit or proceedings referred to in the explanation to the said sub section. Section 8 of the Family Courts Act, which is relevant for consideration, is reproduced hereinbelow:-

***“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);***

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*(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 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.”***

The abovesaid section also provides that the cases which are required to be taken before the Family Court under the 1984 Act and were pending immediately before the establishment of such Family Court before any District Court or subordinate Court would stand transferred to such Family Court on the date on which it is established. The said provision thus excludes the jurisdiction of the District Court or subordinate Civil Courts with respect to the matters which the Family Court is required to decide under 1984 Act after the establishment of the Family Court in the area concerned.

14. Section 7 of the Family Courts Act provides 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

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in respect of suits and proceedings of the nature referred to in the Explanation provided in Section 7(1). Clause (f) of the said explanation provides for a suit or proceeding for maintenance. Section 7 of the Family Courts Act is reproduced hereinbelow:-

***“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 sub-section 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 circumstance arising out of a marital relationship;***

*(e) a suit or proceeding for a declaration as to the legitimacy of any person;*

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*(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.”*

15. In the present case, the suit filed by the plaintiffs is under Section 3 (b) (ii) of the Hindu Adoption and Maintenance Act and a perusal of the prayer clause, which has been reproduced in the earlier part of the present order, and the averments made in the plaint would show that the same is a suit of the nature falling under Section 7(f) of 1984 Act. The finding of the Ist Appellate Court on the said aspect is not under challenge and is not disputed and is in accordance with law. Since after 03.09.2019, the Civil Court ceased to have subject matter jurisdiction to try the suit in question, thus, the evidence recorded by the Civil Court subsequent to 03.09.2019 and also the proceedings carried on subsequent to the said date cannot be stated to be valid and cannot be considered by the Family Court and thus, the proceedings subsequent to 03.09.2019 would have to be conducted afresh. The Division Bench of Bombay High Court in its judgment dated 22.11.2000 passed in LPA-116-2000 titled as “**Anand**



***Govind Bhide vs. Rohini Bhide***” reported as ***2001(1) DMC 646*** had, in a case arising under the Family Courts Act, 1984, after taking into consideration Section 8 and Section 20 of the Family Courts Act observed that once the City Civil Court ceased to have jurisdiction to entertain, try or decide the said suit from the date the Family Court was established, then the evidence recorded by the City Civil Court after that date could not be taken into consideration unless the parties consent to the same. The relevant portion of the said judgment is reproduced hereinbelow:-

*“44.....We have, therefore, no alternative but to do what the law requires and expects us to do. **However inconvenient it may be to the parties, in view of the provisions of the Family Courts Act, 1984, in our opinion, the S.C. Suit No. 3378 of 1983, filed in the City Civil Court at Bombay, stood transferred to the Family Court with effect from 7.10.1989 as the City Civil Court ceased to have jurisdiction to entertain, try or decide the said suit from that day. Needless to say that any evidence recorded by the City Civil Court after that day cannot be taken into consideration unless the parties consent to it. It is clarified that we have not expressed any opinion on the merits of the case.***

45. *In the result, we pass the following order :*

*(a) Appeal is allowed.*

*(b) Impugned order dated January 24, 2000 passed by the learned Single Judge in First Appeal No. 377 of 1990 and the judgment and order dated 22/28.2.1990 passed by the City Civil Court in S.C. Suit No. 3378 of 1983 are quashed and set aside.*

*(c) S.C. Suit No. 3378 of 1983 shall stand transferred to the Family Court with immediate effect to be heard and*

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*disposed of in accordance with law.*

***(d) Any evidence recorded, or order made, by the City Civil Court on and after the establishment of Family Court that is on and after 7.10.1989, shall not be considered by the Family Court, unless parties agree that such evidence may be taken into consideration for disposal of the suit.***

*(e) The Family Court shall dispose of the suit as expeditiously as possible.*

*(f) In the circumstances of the case, there shall be no order as to costs.*

*Appeal allowed.”*

16. In the abovesaid case, the suit was filed in the year 1983 and at the time when the suit was filed, the City Civil Court had the jurisdiction to decide the said suit. The competent Family Court in the said case was established on 07.10.1989. The case was not transferred to the Family Court as in the present case and the City Civil Court vide judgment dated 22/28.02.1990 decreed the suit. In the said circumstances, the abovesaid judgment was passed by the Division Bench of the Bombay High Court. An argument raised before the Division Bench of the Bombay High Court to the effect that since the suit was pending since 1983 and the evidence had also been recorded and thus, instead of going into question of jurisdiction, the case should have been decided on the basis of evidence on record, was noticed but was rejected although the Court was alive to the fact that the same would cause some inconvenience to the parties. In the present case, it would be relevant to note that this Court in view of the observations made



by the Division Bench of Bombay High Court in the aforesaid case had put it to the counsel appearing for the plaintiff and the defendant, as to whether they have any objection to the evidence which has already been recorded, to be read as evidence before the Family Court and on the said aspect, the counsel for the defendant (husband) has raised an objection.

17. The Division Bench of the Kerala High Court in the case of ***Kinarullaparambath Abdul Azeez and others vs. Valiyaparambath Vasu and others, Op (RC) No.99, 100, 101 and 102 of 2019 decided on 22.07.2019*** had observed that the trial without subject matter jurisdiction is no trial at all and cannot have any sanctity of a valid trial and the end result of such a trial is a non-est decree or order and had further observed that in such circumstances, the oral evidence recorded during the vitiated trial cannot assume any significance or validity to be called a deposition recorded during the judicial proceedings. It was thus held that the transferee Court would have to conduct de novo trial and that the evidence recorded by the Court having no subject matter of jurisdiction could not be used for deciding merits of the case. The relevant portion of the said judgment is reproduced hereinbelow:-

***“16. Another question arising for consideration is about the utility of evidence recorded by a Nyayadhikari in the course of trial of rent control petitions without having subject matter jurisdiction. It is trite that a trial without subject matter jurisdiction is no trial at all and it cannot have any sanctity of a valid trial. The end result of such a trial is a non-est decree or order. Such a trial process is vitiated because the defect in***

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***the jurisdiction goes to the root of the Court's authority. When a trial before a court without jurisdiction over the subject matter results in a null, void and non-est decree or order, it will be very clear that the oral evidence recorded during the vitiated trial cannot assume any significance or validity to be called a deposition recorded during a judicial proceedings.***

***17. The term "judicial proceedings" is not defined in the Indian Evidence Act, 1872 ( in short 'the Evidence Act'). In many decisions, it has been held that "judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath. Judicial proceeding is "any proceeding in the course of which evidence is or may be taken or in which any judgment, decree, sentence or final order is passed on recorded evidence". It has aslo been stated that a judicial proceeding means a proceeding in which judicial functions are being exercised. It is therefore vividly definite that a proceeding whereby Nyayadhikari disposing of rent control petitions without subject matter jurisdiction can never be regarded as a judicial proceeding since the lack of jurisdiction goes to the root of the matter.***

xxx xxx xxx

***.....Resultantly, the captioned original petitions are disposed as follows :***

***Gram Nyayalaya, Kunnummel Block, Kuttyadi is directed to transmit the records in the rent control petitions referred to above to the Rent Control Court, Nadhapuram for trial and disposal in accordance with law. Prayers made in the original petitions seeking a declaration that the petitioners are entitled to execute the orders passed by Gram Nyayalaya in rent control petitions are declined for the aforementioned reasons. Likewise, prayers in the***

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*original petitions to direct the Rent Control Court to consider the depositions of witnesses recorded by Gram Nyayalaya in the eviction proceedings as substantive piece of evidence are also declined.*

*The Gram Nyayalaya shall notify the parties about the date of return of the eviction petitions so as to enable them to come and receive the same for presentation before appropriate court.*

*All pending interlocutory applications will stand closed.”*

18. Keeping in view the above said facts and circumstances, this Court is of the view that the evidence recorded and the proceedings conducted before the Civil Judge (Jr.Div.), Fatehabad subsequent to 03.09.2019 cannot be taken into consideration by the Family Court to whom the case has been ultimately transferred and the second question is accordingly answered.

### **CONCLUSION**

19. This Civil Reference is thus disposed of with the conclusion that the Ist Appellate Court i.e., the Additional District Judge, Fatehabad, was competent to hear the appeal and the cross objections challenging the judgment and decree dated 18.04.2022 passed by the Civil Judge (Jr.Div.), Fatehabad and that the proceedings conducted before the Civil Judge (Jr.Div.), Fatehabad subsequent to 03.09.2019 cannot be taken into consideration by the Family Court to whom the case has been ultimately transferred and the Family Court would thus proceed with the case from the stage as it was on 03.09.2019 and after giving due opportunity to both the parties to lead their evidence afresh would adjudicate the case, in accordance with law.



20. The Registrar of this Court is directed to transmit a copy of the present judgment to the Court by which reference has been made, in accordance with law, for further necessary action.

**(VIKAS BAHL)**  
**JUDGE**

**October 13, 2025**  
*Pawan/Davinder Kumar*

<b>Whether speaking/reasoned:-</b>	<b>Yes/No</b>
<b>Whether reportable:-</b>	<b>Yes/No</b>