CNR No. SKHC01-00080-2025

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

SINGLE BENCH : THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

RSA No.01 of 2025

... **Appellant**

versus

2. The Municipal Commissioner,
Gangtok Municipal Corporation,
P.O. Deorali, P.S. Gangtok,
Sikkim ... **Respondents**

Appeal under Section 100 of the Code of Civil Procedure, 1908

{An Appeal against the impugned Judgment dated 12.03.2025 passed by Learned Principal District Judge, Gangtok, in Title Appeal No.04 of 2024 (Shri Ganga Ram Rai vs. Ms. Sonali Rai and Other}.

Appearance:

Mr. N. Rai, Senior Advocate (Legal Aid Counsel) and Mr. Rajendra Upreti, Advocate (Legal Aid Counsel) for the Appellant.

Ms. Zola Megi, Advocate and Ms. Rewarshi Rai, Ms. Grace Chettri and Ms. Justina Gurung, Advocates for the Respondent No.1.

Mr. Lahang Limboo, Advocate for the Respondent No.2.

Date of hearing : 05-11-2026
Date of Judgment : 05-11-2026
Date of uploading : 06-11-2026

JUDGMENT (ORAL)

Bhaskar Raj Pradhan, J.

This is a Regular Second Appeal. The solitary question framed by this Court is;

> *"Whether the suit filed by the appellant falls under Section 7(1)(e) of the Family Courts Act, 1984?*

2. Section 7 of the Family Courts Act, 1984, deals with the jurisdiction of the Family Courts. Sub-section (1)(e) states that a suit or proceeding for a declaration as to legitimacy of any person shall be decided by the Family Courts.

3. Section 8 of the Family Courts Act, 1984, deals with the exclusion of jurisdiction and pending proceedings. It provides:— **"***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 exercised any jurisdiction in respect of any suit or proceeding of the nature referred in the Explanation to that sub-section*.**"**

4. The Regular Second Appeal has travelled to this Court in this manner. The appellant before this Court, a minor, then four months, through her mother and natural guardian filed a plaint against the respondent no.1 whom she claimed to be the grandfather and respondent no.2—the Municipal Commissioner, Gangtok Municipal Corporation, seeking the following reliefs;

> **"***.....*
> *a. A decree declaring that the Plaintiff is the legal and natural daughter of late Ajai Rai and granddaughter of defendant no.1.*
> *b. A decree directing the defendant no.2 for issuance of Plaintiff's birth certificate;*
> *c. Cost of the suit;*
> *d. Any other relief or reliefs as the Plaintiff may be entitled to, under the law.*
> *.....***"**

5. The averments in the plaint summarised is that late Ajai Rai and the appellant's mother Son had married and solemnized their marriage, on 27-12-2015, at Legship Mandir (Shivalaya Mandir) according to customary rites and ceremonies in presence of relatives and well-wishers. According to the appellant,

late Ajai Rai died on 10-04-2019 due to ailments when her mother was seven months pregnant with appellant who was born on 01-06-2019. According to the plaint, after her birth the hospital submitted the birth report and legal information to the office of the Municipal Commissioner for registration of her birth and issuance of birth certificate which was registered vide entry no.962, dated 13-06-2019. However, during the process of issuance of her birth certificate the family members of the respondent no.1 filed their objection with the office of the Municipal Commissioner and her birth certificate was withheld. It was the appellant's grievance that since the death of her father due to the facts mentioned in the plaint the appellant is facing serious identity and paternity crisis regarding her father and her paternal family. Further, she has also been deprived of her legal document i.e., the birth certificate etc. It is in these circumstances, according to the appellant, that it had become necessary to confirm that the appellant is the daughter of late Ajai Rai and accordingly her birth certificate be issued as it is a right to know the truth of her origin and her biological roots.

6. The learned first Court vide its Judgment, dated 22-04-2024, in Title Suit No.20 of 2019 (*Sonali Rai* vs. *Ganga Ram Rai and Another*), decreed the suit in favour of the appellant and gave a declaration that she is the biological daughter of late Ajai Rai and also the granddaughter of the respondent no.1. Accordingly, the respondent no.2 was directed to issue the appellant's birth certificate.

7. Dissatisfied, the respondent no.1 preferred Title Appeal No.04 of 2024 (*Ganga Ram Rai* vs. *Sonali Rai and Another*), before the learned Principal District Judge, Gangtok, who vide Judgment dated 12-03-2025, set aside the learned first Court's Judgment holding that

the learned first Court did not have jurisdiction to decide whether the appellant was the child of late Ajai Rai and ought to have returned the plaint to be presented to the Family Court, in which the case was to be instituted.

8. Heard learned senior Counsel for the appellant, learned counsel for the respondent no.1 and respondent no.2. Learned counsel for the respondent no.2 submits that the birth certificate has been issued in favour of the appellant which is confirmed by learned senior counsel appearing on behalf of the appellant.

9. Learned senior counsel placed reliance upon the Judgment of the Kerala High Court in ***Bharat Kumar*** vs. ***Selma Mini and Another***[1]. The Judgment of Division Bench of the Kerala High Court relates to an issue which would have direct bearing in the present case. The question which was examined by the Division Bench was: **"***Whether paternity of a child is an issue to be considered by the Family Court under Section 7(1)(e) of the Family Courts Act, 1984, without a matrimonial cause, is the question to be considered in this case*?**"** The question was answered in this manner;

> ***"4.*** *The jurisdiction conferred on the Family Court is settlement of issues arising out of matrimonial causes. Matrimonial cause is a cause relating to rights of marriage between husband and wife. Paternity and legitimacy are two different concepts. Paternity by itself may not, in all circumstances, be a matrimonial cause, as in the instant case. Paternity is the state or fact of being the father of a particular child. Legitimacy of a child is its right to be officially accepted as such. Admittedly the petitioner is not the husband of the first respondent. According to the 1st respondent, she had only extra marital relationship with the petitioner. The second respondent herein is the husband. He did not have a case regarding legitimacy of the child. The Family Court gets jurisdiction to go into the question of legitimacy of any person only if such a question arises in a matrimonial cause. An investigation on the paternity of a person is required only when the question of legitimacy of the person is to be decided by the Family Court. That question arises only out of a matrimonial cause where there is a claim on matrimonial*

[1] 2007 SCC OnLine Ker 10

> *relationship out of which the said person is born. It may also arise in situations covered by explanation (g) to Section 7(1), in the case of guardianship, as held by the Supreme Court in Renubala Moharana v. Mina Mohanty, (2004) 4 SCC 215: (2004 (2) KLT SN 38 (SC): (AIR 2004 SC 3500). It was also held by the Supreme Court in the said decision that the Family Court cannot entertain any proceedings for declaration as to the legitimacy of any person without any claim on marital relationship. In the case before us the petitioner before the Family Court, the first respondent herein, does not have a case of marital relationship with the petitioner herein. The case admittedly is of extra marital relationship. The dispute is with regard to the paternity of a child born in the said extra marital relationship. That is not a matter falling within the jurisdiction of the Family Court. Paternity of a child can be gone into as incidental to a dispute on the legitimacy arising only out of a claim on marital relationship between the parties. Such a question also may incidentally arise in deciding a guardianship petition. No such situation arises in this case.***"***

10. Learned counsel for the respondent no.1 relied upon the judgment of the Supreme Court in ***Renubala Moharana and Another*** vs. ***Mina Mohanty and Others***[2]. The relevant paragraph is reproduced verbatim;

> ***"6.*** *The view taken by the High Court as regards the first prayer has been assailed before us. Under Section 7(1) read with Clause (e) of the Explanation, a suit or proceeding for a declaration "as to the legitimacy of any person" is within the jurisdiction of the Family Court. According to the appellants, the child was born on account of extra-marital relationship of Respondent No.1 with their son the late Samuel Maharana. Accepting the case of the appellants, the child cannot obviously be treated as a legitimate child of Samuel and Mina Mohanty (R1). The question of status of the child in relation to the parties to the petition can be incidentally gone into by the Family Court if necessary while deciding the guardianship petition. That liberty has been granted to the Family Court. However, as rightly held by the Family Court and the High Court, the declaratory relief as regards the illegitimacy of the child cannot be granted. In effect, that is what the appellants want under prayer No.1.***"***

11. A perusal of the aforesaid two judgments of the Supreme Court and the Kerala High Court leaves no room to doubt that the case of the appellant before the learned first Court squarely fell within the parameters of Section 7(1)(e) of the Family Courts Act, 1984, as the claim for a decree declaring that the appellant is the legal and natural

[2] AIR 2004 SC 3500

daughter of late Ajai Rai and granddaughter of respondent no.1 was based on the matrimonial relation between late Ajai Rai and her mother. Thus, it would squarely fall under Section 7(1)(e) of the Family Courts Act, 1984, to the exclusion of the Civil Court as expressly provided in Section 8 thereof.

12. I have therefore no hesitance in upholding the Judgment of the learned Appellate Court. The Appeal is therefore rejected.

13. Pending applications, if any, also stand disposed of.

14. Copy of this Judgment be transmitted to the Learned Courts below forthwith along with all records.

(Bhaskar Raj Pradhan)
Judge

Approved for Reporting : Yes

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