

MATRIMONIAL JURISDICTION.

Before Rankin C. J. and C. C. Ghose and Pearson JJ.

GARAO SANGMA

v.

RANGJI MECHIK.*

1928

March 7.

Divorce—Dissolution of Marriage—Ex-parte decree for dissolution of marriage—Dispensing with service on respondents—Co-respondent, a necessary party—Divorce Act (IV of 1869), s. 50.

The co-respondent is a necessary party in a suit by the husband for dissolution of marriage.

Every attempt should be made to serve notice of a divorce suit on the respondent and co-respondent. Where personal service is not possible, the whereabouts of the respondent and co-respondent not being traceable, it is desirable that the matter should be announced in the village by beat of drum and that the proper notice should be put up at the court house.

Though the Commissioner has a discretion to dispense with the service, under s. 50 of the Divorce Act, where such service is dispensed with, he must pass an express order to that effect stating his reasons therefor.

REFERENCE under section 20 of the Indian Divorce Act (IV of 1869) for confirmation of a decree for divorce passed by the Deputy Commissioner, Garo Hills.

On the 13th December, 1918, Garao Sangma, the plaintiff, was married to Rangji Marak. The ceremony was performed according to the Christian religious custom. It was alleged by the plaintiff that in March, 1925, one Oronsing Sangma enticed Rangji Marak and ran away with her somewhere and that their whereabouts could not be traced. The plaintiff did not want to take her back any more and wished to divorce her. He, therefore, filed this petition for dissolution of marriage in July, 1927, making only Rangji Marak the defendant. The case was heard *ex parte* on the 22nd August, 1927, and the plaintiff and two witnesses were examined. The Deputy

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Commissioner delivered judgment the next day. He held that Rangji had been twice found guilty of adultery in the village by a village *panchayat*, but the offences had been condoned and she had been taken back by her husband and that in 1925 she had ran away with one Oron Sangma of the same village and had not been seen or heard of since. Notice had been issued on the respondent, Rangji Marak, and co-respondent, Oron Sangma, but their address being unknown, it could not be properly served and it was accepted by the father of Rangji on her behalf. None of the persons examined in the case having heard of the woman since her elopement and none knowing where she was living and there being no evidence of collusion, the Deputy Commissioner decreed divorce, the disappearance of the opposite parties being *prima facie* evidence of their guilt, in his opinion. The Deputy Commissioner then referred the matter to the High Court for confirmation.

No one appeared for any party in the case.

RANKIN C. J. In this case the Deputy Commissioner of the Garo Hills has pronounced a decree for dissolution of marriage, subject to confirmation by this Court, upon a husband's petition. The petition appears to make the wife the defendant and does not appear to have been framed so as to include the co-respondent as a party. It would appear from the judgment of the Deputy Commissioner that summonses were issued upon the wife and the co-respondent, but neither the wife nor the co-respondent could be found in the village. Accordingly, without making any order dispensing with the service, the Deputy Commissioner has proceeded *ex parte*, and has pronounced a decree for divorce. The case made by the petitioner is that the wife left the village with the co-respondent and neither has been seen or heard of since. The summons to the wife was apparently accepted by her father on her behalf, she being absent. In these circumstances, it does not appear to me that the Deputy Commissioner has proceeded with sufficient

formality or has taken sufficient steps to ensure that the proceedings should be brought to the notice of the co-respondent.

It appears to me that the matter must go back, first, in order that the co-respondent may be added as a party to the petition, and secondly, in order that further steps may be taken as regards service both upon the wife and the co-respondent. The Deputy Commissioner is in a better position than I am to decide as to what steps are practicable. In default of anything else, it would appear to be desirable that an order should be recorded that the matter should be announced in the village by beat of drum and that the proper notice should be put up at the court house. The case must go back for that purpose. We appreciate that, under section 50 of the Divorce Act, the Commissioner has a discretion to dispense with the service in a proper case. He does not appear to have exercised that discretion by recording any proper order in the matter. But apart from that, it does not seem to be right that service should be dispensed with upon the very bare materials laid before the Deputy Commissioner at the time. The case, therefore, will go back for further steps as to service and thereafter, if necessary, for a proper order dispensing with service. The case must be reheard.

GHOSE J. I agree.

PEARSON J. I agree.

S. M.

Case remanded.

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