

reversed within the period of iddut, it becomes thereafter irrevocable. The same view was taken by the High Court of Allahabad in *Hamid Ali v. Intiasan*. It is then urged that the District Judge refused to accept fresh evidence tendered by the appellant to prove that the divorce had been reversed, but there is no affidavit to that effect. Nor does the record support the statement. On the other hand, we observe that the Judge took some new evidence after the issues had been remitted to him.

We accept the findings and dismiss the appeal with costs.

IBRAHIM
v.
SYED BIBI.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Wilkinson.

VENKAMMA (DEFENDANT), APPELLANT,

and

SAVITRAMMA (PLAINTIFF), RESPONDENT.*

1888.
August 6.
October 23.

*Parent and child—Interference with natural rights for the benefit of the child—
Equity and good conscience.*

Plaintiff, a Brahman widow, sued to recover her illegitimate infant child from defendant, to whom she had entrusted it since its birth for nurture :

Held, that it being proved that the plaintiff was leading an immoral life, the suit was rightly dismissed.

APPEAL from the decree of A. L. Lister, District Judge of Godavari, reversing the decree of G. Jaganadha Rau, District Munsif of Amalapur, in suit No. 240 of 1886.

The facts appear sufficiently for the purpose of this report from the judgment of the Court (Kernan and Wilkinson, JJ.).

Subha Rau for appellant.

Venkataramayya Chetti for respondent.

JUDGMENT.—The plaintiff's claim to the possession of the female infant, as stated in the plaint, is that the mother of the child died leaving her with the plaintiff's mother, who, before her death, gave the custody of the child to the plaintiff. The plaintiff gave to the defendant the child, then only one month or so old. The plaintiff alleges that the child was entrusted to the defendant

* Second Appeal No. 1255 of 1887.

VENKAMMA as a temporary convenience, but the defendant says the plaintiff
v. gave over the child to be maintained and provided for permanently
SAVITRAMMA. by the defendant. What the arrangement was is not important
to the question to be decided.

It turned out on the hearing before the Munsif that the child was born of the plaintiff, who is 25 years old and a Brahman widow, more than twelve months after her husband's death. The plaintiff and defendant were examined before the Munsif, and he was of opinion that the child was probably born in the house of the defendant and was kept there to avoid the disgrace that would fall on the plaintiff if it was known she had an illegitimate child. The Munsif found that the child produced before him was well cared for and apparently attached to the defendant. The Munsif also found that defendant is in good circumstances and that the plaintiff has no visible means of livelihood and is houseless, and, in the interest of the infant, he declined to make a decree in favor of the plaintiff for the custody of the child. The District Judge reversed the Munsif's decree and decreed that the plaintiff should have the custody of the child and directed that the child should be delivered over to the plaintiff.

When the case came before the Court on second appeal we directed the Munsif to inquire how the plaintiff is maintained or with whom she resides and whether she is of respectable character.

After examining the plaintiff and witnesses for the plaintiff and for the defendant, the District Munsif, himself a Brahman, after referring to the evidence, found that, though there are many Brahmans in the village where plaintiff lives, some of whom are closely related to her, she has not summoned even one to prove that she still is respected as a caste-woman, and he is satisfied she is not regarded as a Brahman; that though she is visited by Brahman men they do not dine there, and that the object of their presence there is obviously for immoral purposes. On the whole he reports he is disposed to think her character is immoral.

No question has been made as to the jurisdiction of the Munsif to try this suit; and, admitting that ordinarily the mother of an illegitimate infant is entitled, during the period of nurture, to the custody of the infant, the question in this suit is whether the plaintiff is, upon the facts found by the Munsif (as to plaintiff's conduct) in the original hearing and on the inquiry by him, entitled to the custody of the infant as against the defendant who

has had the custody of the child committed to her by the plaintiff. There is no reason why the principle applicable to the Mufassal of "Equity and good conscience" should not be applied to determine whether the infant should be given over to the custody of a natural guardian leading an immoral life and by whose example the morals of the child are likely to be corrupted. The Minors' Act IX of 1861 recognizes the authority of the Principal Civil Courts in India of original jurisdiction to determine on petition questions as to the custody of infants. On the ground of pecuniary benefit alone to the child, the plaintiff could not be deprived of her right to the custody. But the Courts of Law in England and Ireland, in cases where immoral conduct and character is proved against even a mother of a legitimate child, interfere with the ordinary legal right of the mother to the custody of the child. See *Reg. v. Clarke*(1) and *Skinner v. Orde*(2).

VENKAMMA
v.
SAVITRAMMA.

It would be against equity and good conscience to deliver the infant into the custody of the plaintiff whom the Munsif has found to be a person who receives visits from men for immoral purposes and to be of immoral character. Moreover, the plaintiff delivered over the infant almost from her birth to the defendant, a respectable woman in good circumstances, who has since nurtured the child for upwards of two years, and to whom the child is affectionately attached, while she is a stranger to her mother. Under these circumstances we reverse the decree of the Lower Appellate Court and restore that of the Munsif. No costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Wilkinson.

COOLING AND ANOTHER (DEFENDANTS), APPELLANTS,
and

SARAVANA (PLAINTIFF), RESPONDENT.*

1888.
July 30.
August 14.

Lien on land created by agreement—Sale to stranger without notice—Purchaser bound.

D mortgaged certain land to *S* to secure repayment of a loan, and covenanted that in a certain event *S* might realize the money from the house of *D*. *D* sold this house to *C*, who purchased without notice of the covenant.

Held, that *C* could not resist the claim of *S* to have the house sold under the covenant.

(1) 7 E. & B., 186.

(2) 14 M.J.A., 309.

* Second Appeal No. 1112 of 1887.