

APPELLATE CIVIL.

1897

August 2.*Before Sir John Edge, Kt., Chief Justice and Mr. Justice Blair.*

MIR AZMAT ALI (PLAINTIFF) v. MAHMUD-UL-NISSA (DEFENDANT).*

*Suit for marriage—Jactitation of marriage—Jurisdiction of Civil Courts in British India to entertain such a suit between Muhammadans.**Held that a suit for jactitation of marriage will lie in a Civil Court in British India, and is not within the ruling of the Privy Council in Rajah Nilmony Singh v. Kally Churn Bhattacharjee (1).*

THE plaintiff sued in the Court of the Subordinate Judge of Meerut for a declaration that the defendant was not, as she falsely alleged herself to be, the wife of the plaintiff, and that a child to which she had given birth, and which she alleged to be his, was not his. The plaintiff's case was that the defendant had been married to one Kallu Mir, and that the marriage was still subsisting. Prior to this suit being brought the defendant had obtained from a Criminal Court an order against the plaintiff for the maintenance of her child as having been begotten by the plaintiff, though the Criminal Court did not find that the defendant was married to the plaintiff. The present suit was dismissed by the Subordinate Judge, who found that the defendant was the lawfully married wife of the plaintiff and that the child was his.

On appeal by the plaintiff the defendant respondent raised an objection that the suit was not cognizable at all by a Civil Court. This objection was sustained by the lower appellate Court, which dismissed the appeal, relying on the case of *Rajah Nilmony Singh v. Kally Churn Bhattacharjee*, (1).

The plaintiff appealed to the High Court.

Messrs. *T. Conlan* and *D. N. Banerji*, for the appellant.

Babu Jogindro Nath Chaudhri, for the respondent.

EDGE, C. J. and BLAIR J. :—This is a suit for jactitation of marriage which was brought by a Muhammadan named Mir Azmat Ali against one Musammat Mahmud-ul-nissa. She had taken

* Second Appeal No. 679 of 1895, from a decree of A. M. Markham, Esq., District Judge of Meerut, dated the 1st May 1895, confirming a decree of Pandit Bansidhar, Subordinate Judge of Meerut, dated the 24th March 1894.

(1) L. R., 2 I, A., 53.

proceedings against him in the Magistrate's Court on more than one occasion to obtain orders of maintenance for herself and her child on the allegation that she was the wife of Mir Azmat Ali and the child was their child. The first Court dismissed the suit, finding for the defendant that she was the plaintiff's wife. The plaintiff appealed. The first appellate Court dismissed the appeal on the ground that such a case came within the ruling of the Privy Council in *Rajah Nilmony Singh v. Kally Churn Bhattacharjee* (1), and that consequently the suit did not lie. But the case before the Privy Council was a very different one. The decision apparently is one which would forbid the institution of a novel description of suit to set aside a mere assertion. A suit for jactitation of marriage is not by any means a novel description of suit: it was a suit in which relief was given in England in the Ecclesiastical Courts, and when the jurisdiction of those Courts was transferred to the Divorce Court by the Act of 1857, the jurisdiction of the Ecclesiastical Courts in suits for jactitation of marriage was transferred to the Divorce Court. In England it was not only a well-known suit within the jurisdiction of the Ecclesiastical Courts, but it was considered proper that that jurisdiction should be continued by the Divorce Court in England, and there can be no doubt that unless a man is entitled by means of the Civil Courts to put to silence a woman who falsely claims to be his wife, the man and others may suffer considerable hardship, and his heirs may be harassed by false claims after his death. The suit for jactitation, however, is one not to be encouraged, particularly in a country like this, in which persons unfortunately are too anxious to discover forms of legal procedure by which they can annoy their neighbours. In our opinion, however, such a suit lies in a Civil Court in this country. The Court trying such a suit will of course take care, before granting a plaintiff a decree, to see that it is strictly proved that the defendant did seriously allege that the disputed marriage had taken place and that the plaintiff did not acquiesce in the claim or allegation of the

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defendant as to the disputed marriage, and further that in fact no marriage had taken place between the parties. We set aside the decree of the lower appellate Court, and remand the case under section 562 of the Code of Civil Procedure to that Court to be disposed of upon the merits.

Appeal decreed and cause remanded.

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August 4.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.

AMAN SINGH AND ANOTHER (PLAINTIFFS) v. NABAIN SINGH AND OTHERS
(DEFENDANTS).*

Civil Procedure Code, section 462—Compromise on behalf of a minor—Suit to set aside compromise as having been entered into without the leave of the Court.

Where the guardian *ad litem* of certain minors assented on their behalf to a compromise, which compromise was accepted by the Court, and a decree passed thereon, and was found not to be prejudicial to the interests of the minors; it was held that the minors could not, after the decree based upon the compromise had become final, succeed in a suit to set it aside on the sole ground that the Court had not previously given leave to the guardian to enter into the compromise. *Kalavati v. Chedi Lal* (1) distinguished.

THIS was a suit to set aside a decree passed on the basis of a compromise. One of the plaintiffs was of full age, the other a minor. At the time of the compromise in question being made both had been minors, and had been represented by their mother Musammat Ganga as guardian *ad litem*. The Court of first instance decreed the plaintiffs' claim, holding that the conduct of Musammat Ganga in relation to the compromise was suspicious and that she had been fraudulently induced by the plaintiff in the former suit to assent to it on behalf of her minor sons.

On appeal by the defendants the lower appellate Court (District Judge of Aligarh) held that the fraud and collusion alleged by the plaintiffs had not been proved, neither was it shown that the compromise entered into on their behalf by the mother of the

* Second Appeal No. 724 of 1895 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 8th April 1895, reversing a decree of Babu Bepin Behari Mukerji, officiating Subordinate Judge of Aligarh, dated the 19th December 1894.