1887

SIMBHU-NATH PANDE v. GOLAP SINGH.

influenced by that of the Procedure Code. But it is the instrument which confers title on the purchaser. Its language, like that of the certificate in *Hurdai Narain's case*, is calculated to express only the personal interest of Luchmun. It exactly accords with the expressions used in the decree of August, 1869, founded on Luchmun's own vernacular expressions, which the High Court construe as pointing to his personal interest alone. The other circumstances of the case aid the *primâ facie* conclusion instead of counteracting it, for the creditor took no steps to bind the other members of the family, and the Rs. 625 which he got for his purchase appears to be nearer the value of one-sixth than of the entirety.

Their Lordships will humbly advise Her Majesty that the decree of the High Court should be affirmed and this appeal dismissed.

Appeal dismissed.

Solicitors for the appellants: Messrs. *Miller, Smith & Bell.*

MATRIMONIAL JURISDICTION.

1887
May 3 *and July* 21.

Before Mr. Justice Trevelyan.

THOMSON *v.* THOMSON AND ANOTHER.*

Costs of Suit by husband against wife for divorce—Deposit of costs—Stay of proceedings until costs paid—Poverty of husband.

In a suit brought for dissolution of a marriage solemnised in 1859 (the parties to such marriage being of Anglo-Indian domicile) the respondent, being possessed of no separate property of her own, applied to the Court for an order directing her husband to deposit in Court a sum sufficient to cover her probable costs of suit.

The Court made an order directing the Registrar to estimate and certify the wife's probable costs of suit, and directed the husband to pay the sum so certified into Court. The husband being a man of next to no means failed to pay into Court the sum certified by the Registrar. *Held*, on an application by the wife to stay proceedings until such costs were paid, that it would be unreasonable to stay proceedings on account of the husband being unable to pay into Court that which he did not possess; but that, inasmuch as the affidavits filed by the parties were contradictory as to the means of the husband, the matter should be referred (if the parties so desired it) for an enquiry by an officer of the Court into the question of means.

* Suit No. 2 of 1887.

1887

THOMSON v. THOMSON.

THIS was an application by one Margaret Matilda Thomson (the respondent in a suit brought for dissolution of marriage) praying that Charles Thomson, the petitioner in the suit referred to, might be ordered to deposit in Court a sufficient sum to cover her probable costs of suit. The parties were of Anglo-Indian domicile, and had been married in India in the year 1859.

The applicant stated that she had entered appearance, but was entirely unable to provide funds to meet the costs and expenses of the suit. Charles Thomson, who appeared in person, stated that the respondent was openly living with the co-respondent and under his name, and that they had started a joint tea business trading under his wife's maiden name; that he was employed in the Port Commissioner's Office on a salary of Rs. 150 a month and was supporting himself and four children out of that sum; that he had no other monies or means to pay any costs of the suit which might be incurred by his wife.

Mr. *Pugh* appeared for the applicant, and contended that the wife was entitled to the order; that the statements made as to her means were vague, citing *Young* v. *Young* (an unreported case), in which, following *Proby* v. *Proby* (1), an order refusing an application for wife's costs was made by Mr. Justice Pigot on the 12th January, 1886, and distinguishing the case from the present as the marriage there was solemnised in England after the passing of the Married Woman's Property Act, citing also *Ward* v. *Ward* (2), *Fowle* v. *Fowle* (3), *Proby* v. *Proby* (1), and contending that the consideration arising in *Walker* v. *Walker* (4) would not arise at the present stage of the proceedings.

TREVELYAN, J.—This is an application calling on the petitioner to show cause why he should not deposit the probable amount of costs to be incurred by the respondent in the suit brought against her by him. The parties were married before the Succession Act, and are of an Anglo-Indian domicile. I think I must follow the rule formerly in force in England and require him to deposit the necessary costs. To this rule there are two main exceptions: (*a*) cases such as *Proby* v. *Proby* (1), and

(1) I. L. R., 5 Calc., 357.
(2) 1 Sw. & Tr., 484.
(3) I. L. R., 4 Calc., 260.
(4) 1 Curt., 560.

1887

THOMSON v. THOMSON.

(*b*) where the wife has separate property sufficient for her support and for the costs of suit. The husband must, however, satisfy me that the wife has sufficient separate property for those purposes, but there is nothing in his affidavit to show what the means of the respondent are. I am not satisfied with Mr. Pugh's argument that the considerations arising in *Walker* v. *Walker* (1) do not arise at this stage; the husband there appears to have been a man of absolutely no means, but here the petitioner's affidavit does not show that he is a man of no means. I think I must make the ordinary order, and direct that it be referred to the Registrar to estimate and certify the probable amount of the costs of suit of the respondent up to and including the final hearing and decree and that the petitioner do pay the amount so to be certified to the credit of the suit. Costs of this application to be costs in the cause.

In accordance with this order the Registrar certified that the probable amount of such costs would amount to Rs. 1,732. The amount certified was not paid into Court, and the respondent, on the 21st July, 1887, applied to the Court on notice for an order that the proceedings on the petition be suspended until the costs certified by the Registrar be first paid.

Mr. *Pugh* for the applicant cited *Keane* v. *Keane* (2).

The petitioner appeared in person, and read an affidavit, in which he swore that he was unable to find the sum required, he being in receipt of Rs. 150 per month only; that he believed that the application was made merely for the purpose of preventing the suit being brought to a hearing; that he had already borrowed money to support himself and his four children and for the marriage expenses of another of his daughters, who had been married at the beginning of 1887.

TREVELYAN, J.—This is an application by a wife, respondent in a suit for dissolution of marriage, to stay proceedings in the suit until the costs estimated by the Registrar to be the costs she will probably incur in the suit are paid. Mr. Pugh for the respondent contended that I am bound by *Keane* v. *Keane* (2) to make the order. I cannot find any case in which

(1) 1 Curt., 560. (2) L. R., 3 P. & D., 52.

1887

THOMSON v. THOMSON.

an order of this kind has been made against a husband who is possessed of no means. It would be unreasonable to stay proceedings because a person of no means has not deposited what he has not got. The whole question is, has the petitioner the means wherewith to pay his wife's costs; he himself says in his affidavit he is not able to deposit all the money required; the wife on the other hand says that he is able to do so. The affidavits therefore do not dispose of the matter, so the only course left is to refer it to Mr. Fink to enquire what the petitioner is possessed of. Costs to be costs in the cause. If, however, the respondent should be advised to waive the enquiry, the application will be dismissed, and the costs thereof will be costs in the cause.

Case referred.

Attorney for respondent: Mr. *H. C. Chick.*

Petitioner in person.

T. A. P.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

FAZAL RAHAMAN AND ANOTHER (PLAINTIFFS) *v.* IMAM ALI AND ANOTHER (DEFENDANTS).*

1887
May 18.

Sale for arrears of revenue—Act XI of 1859, *s.* 36—*Certified purchaser, Suit against—Civil Procedure Code—Act XIV of* 1882, *s.* 317.

A, the certified purchaser of a taluk at a sale held under the provisions of Act XI of 1859 for arrears of revenue, and who had obtained symbolical possession, had at the time of the sale agreed with *B*, the former owner of the taluk, to reconvey to him (*B*) after the sale had been completed.

In a suit by *B* to compel specific performance of the contract, alleging that he had never quitted actual possession of the taluk, objection was taken that the suit was not maintainable under s. 36 of Act XI of 1859 and s. 317 of Act XIV of 1882: *Held* that the suit, not being one to

* Appeal from Appellate Decree No. 2022 of 1886, against the decree of Baboo Jibun Kristo Chattopadhya, Rai Bahadur, Subordinate Judge of Chittagong, dated the 25th of June, 1886, affirming the decree of Baboo Joy Gopal Singha, Munsiff of South Raojan, dated the 18th of January, 1868.