

APPELLATE CIVIL.

1900
March 30.*Before Mr. Justice Burkitt and Mr. Justice Aikman.*

BALDEO BHARTHI (DEFENDANT) v. BIR GIR AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 30—Numerous persons interested similarly in the result of a suit—Permission given to some to sue on behalf of all—Permission granted after the filing of the suit.

Held, that the permission required by section 30 of the Code of Civil Procedure may be granted after the filing of a suit by some only of the persons interested therein. *Fernandez v. Rodrigues* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Ram Prasad*, for the appellant.

Pandit *Sundar Lal*, for the respondents.

BURKITT and AIKMAN, JJ.—In this appeal it is frankly admitted for the appellant that he has no case whatever on the merits. The learned advocate who appears for him raises a technical plea founded on the following facts. The plaintiffs are mahants of a religious body who style themselves Niranjani Akhara comprising hundreds of followers and worshippers. The persons originally claiming in the plaint were the mahants or heads of this body. An objection was taken by the defendants in their written statement that the plaintiffs alone could not sue and that it was necessary that all the other members of the akhara should join as plaintiffs. Upon this an application was made by the plaintiffs, purporting to be under section 30 of the Code of Civil Procedure, asking that, as provided in that section, notices should issue to the various parties who, the defendants alleged, ought to be joined as plaintiffs in the suit, and that permission should be given to the plaintiffs to sue on their behalf. The permission asked for was granted, and the suit proceeded to trial and judgment. It is now contended (judgment having been given against the defendants) that the permission given after the suit had been instituted and after the defendants had been summoned, was a bad permission, and that therefore the trial was vitiated, and the decree a bad one. As to this contention it

* First appeal No. 185 of 1898 from a decree of Babu Prag Das, Subordinate Judge of Saharanpur, dated the 22nd June 1898.

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is sufficient to refer to the case of *Fernández v. Rodrigues* (1). In that case it was held by a Full Bench that the permission required by section 30 of the Code of Civil Procedure may be given subsequently to the filing of the suit. In that decision and in the reasoning on which it was based we fully concur. As remarked by the learned Chief Justice in that case, the question is only one of adding parties. We dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Sir Arthur Strachey, Knight, Chief Justice, Mr. Justice Know and Mr. Justice Blair.

EDWARD CASTON (PETITIONER) v. L. H. CASTON (RESPONDENT) AND W. T. COGDELL (CO-RESPONDENT).*

Act No. IV of 1869 (Indian Divorce Act), sections 17, 20—Decree for nullity of marriage passed by a District Judge—Confirmation of decree by High Court—Period for confirmation—Effect of confirmation, if made before statutory period has elapsed—Act No. 1 of 1872 (Indian Evidence Act), sections 41, 44.

Section 20 of the Indian Divorce Act, No. IV of 1869, does not make the proviso in section 17 applicable to the confirmation by the High Court of a decree of nullity of marriage made by a District Judge, and such a decree may therefore be confirmed before the expiration of six months from the pronouncing thereof. *A v. B.* (2) dissented from.

Assuming the proviso in section 17 to be applicable to a decree of nullity, a decree by the High Court confirming the same before the six months' period has expired, cannot on that ground be treated as made by a Court not competent to make it, within the meaning of sections 41 and 44 of the Indian Evidence Act, 1872, and is therefore, under section 41, conclusive proof that the marriage was null and void.

THIS was a reference arising out of a suit for divorce pending in the Court of the District Judge of Agra. The suit was brought by the husband as petitioner against his wife and a co-respondent. In the course of the hearing the counsel for the co-respondent put in a petition in which he represented that the suit must be dismissed, inasmuch as the petitioner had never been lawfully married to the respondent. The facts upon which that contention

* Matrimonial Reference No. 1 of 1900.