

not made to satisfy an antecedent debt or for a legal necessity of the family is not binding even as to his share in the ancestral property comprised in it.

Decree modified.

1909

KALI
SHANKAR
v.
NAWAB
SINGH.

MISCELLANEOUS CIVIL.

1909.

April, 17.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Richards,
and Mr. Justice Griffin.**

WILLIAM ARTHUR FORSHAW (PETITIONER) v. EUNICE GERALDINE
FORSHAW (OPPOSITE PARTY).

*Act No. IV of 1860 (Indian Divorce Act,) sections 12,17—Decree nisi—Duty of
the Court passing that decree—Confirmation.*

The High Court should not make a decree *nisi* for dissolution of marriage absolute without a motion being made to it for that purpose. When after the passing of the decree *nisi* for dissolution of marriage, no one represented either the petitioner or the respondent and co-respondent in the High Court, *held*, no order could be made on the reference for confirmation of such decree unless a motion was made to the Court for that purpose. *Held* further that under section 12 of the Act the duties of a court in the investigation of a suit for a divorce are that upon any petition for a dissolution of marriage being presented, the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged but also whether or not petitioner has been in any manner accessory to or conniving at the adultery, or has condoned the same; and shall enquire into any counter-charge which may be made against the petitioner. *Culley v. Culley* (1) followed.

THIS was a reference under section 17 of the Indian Divorce Act.

The facts of the case are set forth in the judgments.

The parties were not represented.

The reference was first laid before the Court for hearing on the 12th December 1908, when the following order was passed:

STANLEY, C. J., RICHARDS AND GRIFFIN, JJ.—This matter comes before us upon a reference under section 17 of the Indian Divorce Act for the purpose of having a decree for the dissolution of the marriage of the petitioner with his wife Eunice Geraldine Forshaw on the ground of her adultery with the co-respondent Innes confirmed. The learned District Judge informs us by letter, dated the 3rd of December 1908, that the pleader for the

* Matrimonial Reference No. 2 of 1908 made by J. H. Cuming, District Judge of Cawnpore.

1909

FORSHAW
v.
FORSHAW,

petitioner was required to furnish the correct address of the respondent and co-respondent but was unable to do so inasmuch as he could not find out the residence of his own client, the petitioner. No person appears before us to represent him and we are wholly unable to say whether or not the parties have come to terms and arranged their differences. It may be that since the decree *nisi* was passed the petitioner and respondent have cohabited and so the adultery has been condoned. Under these circumstances we are unable to confirm the decree *nisi* for divorce. A similar question came before a Full Bench of this Court in the case of *Culley v. Culley* (1). In that case it was held by the majority of the Bench that the High Court should not make a decree *nisi* absolute without a motion being made to it for that purpose. In this decision we fully concur. As no one representing the petitioner asks us to confirm the decree we cannot pass any order upon this reference. We shall adjourn the case so as to give the petitioner an opportunity if so advised to institute a proceeding before this Court to have the decree confirmed. We request the learned District Judge to inform the pleader who appeared in his court for the petitioner our order so that he may communicate it to his client if possible.

The case was again laid before the Court on the 17th April 1908, after a petition for confirmation of the decree *nisi* had been made by the husband, when the following order was passed:

STANLEY, C. J., RICHARDS AND GRIFFIN, JJ.—This matter comes before us on a reference under section 17 of the Indian Divorce Act for the purpose of having a decree for the dissolution of the marriage of the petitioner William Arthur Forshaw and his wife Eunice Geraldine Forshaw confirmed. The ground upon which the petitioner sought for a dissolution of his marriage is the adultery of his wife with the co-respondent, one Innes. It appears that in the course of the proceedings the wife was examined and she admitted the adultery. Upon this admission coupled with a letter received from her, the court below found that adultery was proved and passed a decree for dissolution of the marriage. We have no reason on reading the evidence before us to come to the conclusion that the petitioner connived at the adultery or was accessory to it, but at the same time we do not

(1) [1888] I, L. R., 10 All., 550.

think that the case was so thoroughly investigated in the court below as is required or was intended by the legislature. It does not appear that the court below cross-examined the respondent as to the circumstances under which she left her husband's home, or as to the reasons which induced her to go to the house of the co-respondent Innes. Section 12 of the Indian Divorce Act prescribes the duty of a court in the investigation of a suit for a divorce. It provides that upon any petition for the dissolution of a marriage, the court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged but also whether or not the petitioner has been in any manner accessory to or conniving at the going through of a form of marriage, or the adultery, or has condoned the same; and shall also enquire into any counter-charge which may be made against the petitioner. Now in this case as we have said the only evidence in support of the adultery is substantially the evidence of Mrs. Forshaw herself. In that evidence she states that since she left Bareilly she had nothing to do with her husband nor did she return to him; that on the 13th of April she was staying at Cawnpore with Mr. Innes in a house which he rented. She admits that she sent the letter to which we have referred and states that she is living with Mr. Innes and that her husband never approved in any way of what she had been doing. Upon this evidence the court granted the petition observing as follows:—"I think it is unnecessary to require the applicant to produce further evidence. The co-respondent admits the charge of adultery and denies that the applicant connived at it. Both she and the applicant appear to be truthful witnesses." That is the substantial part of the judgment. We think that the court below ought to have subjected the respondent to cross-examination as to the circumstances connected with her departure from and her motive for leaving her husband's home, and to have done as the Act lays down, so far as it reasonably could everything necessary to satisfy itself not only as to the fact of the adultery but also as to whether the petitioner had been in any way accessory to or conniving at it. The provisions of the section which we have quoted should not be overlooked and we hope that in future in matters of this kind coming before the courts below the requirements of the section will be carefully

1903

FORSHAW
v.
FORSHAW.

1909

FORSHAW
v.
FORSHAW,

attended to. We confirm the decree for the dissolution of the marriage of the petitioner with the respondent Eunice Geraldine Forshaw.

Decree made absolute.

1909.

May 25.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Tudball.

PUSA MAL (PLAINTIFF) v. MAKDUM BAKHSH AND OTHERS (DEFENDANTS).*

Act No. XV of 1877 (Indian Limitation Act), Schedule II, Article 139—

Landlord and tenant—Adverse possession—Lease for a term of years—

Tenant holding over after expiration of term—Tenant by sufferance.

Where a tenant holds over after the expiry of the lease, held that time begins to run against the landlord on the expiry of the term of the lease under article 139, Schedule II, Limitation Act, *Adimulam v. Pir Revuthan* (1) dissented from, *Kanthappa v. Sheshappa* (2), *Chandri v. Daji Bhaw* (3), *Madan Mohan Goshain v. Kumar Rameshar Malia* (4) and *Khunni Lal v. Madan Mohan* (5) followed.

THE facts of this case are as follows:—

On April 17th, 1887, one Jhargar executed a *kirayanama* for one year in favour of Bhopal Das, in respect of a house. On February 18th, 1895, Bhopal Das sued Jhargar for rent of the house in the Court of Small Causes. Jhargar pleaded adverse possession in that suit and denied the plaintiff's title. The plaint was returned for presentation to the proper court, but that was not done. In 1897, the house in question along with other properties belonging to Bhopal Das was sold in execution of a decree and purchased by Ram Ratan, the decree-holder. On December 20th, 1901, Pusa Mal purchased the house. He demanded rent from the defendants who were heirs of Jhargar, but they refused to pay. Hence this suit for rent and for possession. The defendants denied the plaintiff's title and contended that the suit was barred by limitation. The courts below dismissed the suit as barred by time. The lower appellate court found that the *kirayanama* was proved, but that since the expiry of the term specified therein the defendants had never paid any rent to the

*Second Appeal No. 521 of 1903 from a decree of Khetter Mohan Ghose, Second Additional District Judge of Aligarh, dated the 6th of March 1903, confirming a decree of Keshab Deo, Munsif of Koil, dated the 24th of August 1907.

(1) (1885) I. L. R., 8 Mad., 424. (3) (1900) I. L. R., 24 Bom., 504.
(2) (1897) I. L. R., 22 Bom., 833. (4) (1907) 7 C. L. J., 615,
(5) (1909) 6 A. L. J. R., 239.