

1918  
January, 24.

Before Mr. Justice Piggott and Mr. Justice Walsh.

HAMID HUSAIN (PLAINTIFF) v. KUBRA BEGAM (DEFENDANT).\*

Muhammadan law—Suit for restitution of conjugal rights—Defence to suit—Cruelty.

In a suit by a Muhammadan husband against his wife, for restitution of conjugal rights it was found on issues remitted by the High Court that there was no very satisfactory evidence of actual physical cruelty, but that the parties were on the worst possible terms, and the reasonable presumption was that the suit was brought for the purpose of getting possession of the defendant's property. There had been a good deal of ill-treatment short of physical cruelty, and the court was of opinion that by a return to her husband's custody the defendant's health and safety would be endangered. In these circumstances the High Court refused to interfere with the decree of the Court below dismissing the suit. *Amour v. Amour* (1) referred to.

THIS was a suit brought by the husband for restitution of conjugal rights. The court of first instance (Subordinate Judge of Saharanpur) decreed the claim; but on the defendant's appeal the District Judge set aside the decree and dismissed the suit. The plaintiff appealed to the High Court.

The case coming on for hearing before PIGGOTT and WALSH, JJ. the following order was made—

“This was a suit for restitution of conjugal rights by a Muhammadan husband. It was decreed by the court of first instance; but has been dismissed by the learned District Judge of Saharanpur in appeal, on the ground that the plaintiff ‘had treated his wife in such a way that he has lost all right to claim restitution of conjugal rights.’

“We are of opinion that the findings of fact recorded by the lower appellate court are not specific enough to dispose of the suit. The principles of law applicable to a defence of ‘legal cruelty’ raised in a case of this sort were laid down by their Lordships of the Privy Council in *Munshi Buzloor Raheem v. Shamsunisa Begam* (2). We may refer also to two decisions of this Court, viz., *Husaini Begam v. Muhammad Rustum Ali Khan* (3) and *Khurshedi Begam v. Khurshaid Ali* (4). We remit the

\* Second Appeal No. 616 of 1916, from a decree of F. S. Taber, District Judge of Saharanpur, dated the 14th day of January, 1916, reversing a decree of Kalika Singh, Subordinate Judge of Saharanpur, dated the 21st of June 1915.

(1) (1904) 1 A. L. J., 318.

(3) (1907) 1, L. R., 29 All., 222.

(2) (1868) 11 Moo. I. A., 551 (610, 611).

(4) (1914) 12 A. L. J., 1035.

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following issues for determination by the court below, on the evidence already on the record:—

(i) s it proved that the defendant has in the past been subjected to ill-treatment, physical or mental, by the plaintiff?

“The finding on this issue should be as specific as possible as regards time, circumstances and the nature of the ill-treatment found.

(ii) On the case as a whole, is the Court of opinion that the defendant has reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's custody?

“Ten days will be allowed for objections after the return of findings.”

The findings returned by the lower appellate court, were as follows:—

“The issues remitted here are:

(1) Is it proved that the defendant has in the past been subjected to ill-treatment, physical or mental, by the plaintiff?

(2) On the case as a whole is the Court of opinion that the defendant has reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's custody?

“The story which the defendant put forward in an application sent by her to the Collector of Muzaffarnagar and Saharanpur was that the plaintiff was really only her agent, but that by some cunning he had made himself out to be her husband; that he wanted her money and with the assistance of a vakil named Liaqat Husain tried to induce her to transfer her property to the plaintiff's name, and that when she refused to comply he took her to kasba Kairana, and kept her a prisoner for one and a half years in the vakil's house, after pretending that he was taking her to Meerut to have false teeth made; that in order to extort property from her he prevented her relations from coming to her; that she was beaten by Liaqat Husain, and treated in a manner in which prisoners in jail are probably not treated. The result, she said, was that she suffered from facial paralysis and palpitation of the heart. She went on to say that plaintiff and Liaqat Husain compelled her by deception to transfer property in their favour, and had got her

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thumb-impression on some paper. That the plaintiff told her that the house at Kairana was that of a robber and knifer. That Jawad Husain (son of the other defendant Zahid Husain) her sister's daughter's son came and called out her name. She ran to see him, but Liaqat Husain scolded his servants for letting him in. That Jawad Husain told her that the house (in which she was imprisoned) was Liaqat Husain's and not that of a robber, that Liaqat Husain did not allow her to say anything more. That plaintiff then took her from Kairana to Sarsena and then from Sarsena to Kalear, where she was made to execute a sale-deed in favour of the wife of one Ashiq Husain and register it before the Sub-Registrar. That this document was for Rs. 20,000 or Rs. 21,000 of which Rs. 7,000 were paid before the Sub-Registrar, of this plaintiff deposited Rs. 6,000 with the banker Jagmandar Das and kept Rs. 500 himself, Rs. 500 had been taken by him previously as earnest money. That plaintiff then put her in the train with his servant to take her back to Kairana. He did not, however, tell her where she was to go, when the train arrived at Saharanpur, she saw Jawad Husain on the platform, jumped out, and embraced him, and asked him what station it was. On his telling her she went home with him.

"She said also that she had fever when she executed the sale deed and that in addition to the Rs. 7,000 abovementioned, plaintiff took from her her boxes containing ornaments to the value of Rs. 2,000. That plaintiff is a pauper, he uses violence to me and robs me of my money.

"Jawad Husain corroborates this story as far as his going to Kairana is concerned, and says that he received a letter from the defendant complaining of ill-treatment. He, however, met her at Saharanpur by chance. Sabir Husain, who went with him to Kairana, also corroborated.

"Examined in court, defendant added that when she was at Saharanpur with him (before she was taken to Kairana) plaintiff beat her very much, that sometimes she aches even now from the wounds. After marriage, he sometimes used to dine out, and was always quarrelling with her and abusing her and her parents, saying that she was of loose behaviour, and demanding money of her, sometimes Rs 2,000 and sometimes Rs. 3,000.

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“ She adds that she has transferred her property to Jawad Husain her child, who is now owner of the property.

“ When defendant took up her residence in Zahid Husain's house plaintiff made an application to the Magistrate under section 552 of the Code of Criminal Procedure asking that the police should order the release of his wife. Then he brought a complaint under section 498 of the Indian Penal Code against Zahid Husain saying that he had enticed her away, and was keeping her as his wife. The Joint Magistrate dismissed this on the 18th of March, 1915, and it was absurd enough complaint, defendant is about 50 years of age, and is said to have lost all her teeth. Plaintiff then filed the present suit.

“ The plaintiff's evidence shows him to be probably without property, although he says that property entered in Liaquat Husain's name belongs to him. He has had no residential house for ten years; Liaquat Husain is helping him in this suit by ‘ money and advice ’; he now lives in Liaquat Husain's house. He admits having kept the defendant ‘ aloof ’ so that no relations might carry her off.

“ The plaintiff has called witnesses to prove that, though they live close to where he lives, they never heard any sound as if plaintiff was ill-treating the defendant. So far as direct evidence is concerned, the case is really one of taking the wife's word against the husband or vice versa.

“ The defendant's married life has been peculiar. In 1902, or 1903, she appears to have run away with one Diwan Shah. The plaintiff lodged a complaint under section 522, and lost it. In 1904, he instituted a suit for restitution of conjugal rights and appears to have been supported in that suit by Zahir Husain, the present second defendant. In her defence in the suit she totally denied having been married to the plaintiff, and further charged Zahir Husain with the intention of taking away her property, in favour of his son. The suit was decreed, and as defendant declined to submit to the decree, she was put into jail for some months. She had sued the plaintiff unsuccessfully for dower, and had executed a deed of gift of all her property in favour of Diwan Shah. When she got out of jail and joined the plaintiff the latter caused her to bring a suit against Diwan Shah to cancel

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the deed of gift in his favour and for possession of her property. In this suit she was successful, and in 1906, she conferred upon the plaintiff the right to manage her property, though not to alienate it or raise money upon it. After that she seems to have lived with the plaintiff to outward appearance peacefully until the year 1914, when the execution of the sale deed of the 18th of May, was immediately followed by her leaving her husband.

" According to the written statement in this case she has now transferred the whole of her property to Jawad Husain, but in her evidence she alleges that it is still hers. It is in Jawad Husain's name, but she maintains that her son has no interest in it during her life-time. Jawad Husain, of course, contends that according to the deed of gift he is owner of the house.

" As I have intimated, both plaintiff and defendant are well stricken in years, and it seems clear that the defendant is in the unfortunate position of a woman with property which is desired by a needy husband on the one hand and needy relations on the other. The learned Subordinate Judge thinks that plaintiff at one time beat her, but, he says, that any husband would do that to a wife whose fidelity he suspected. On the whole, the evidence that plaintiff has ill-treated the defendant physically, except, if it be an exception to the extent, is not satisfactory; when giving her evidence she alleged merely that he abused her, and the allegations in her written petitions appear hardly to be made out. That she has been ill-treated by him in other ways, that is to say, mentally, is however reasonably likely; he admits having prevented her relations from having access to her, he did not hesitate to keep her for months in jail and she elected to stay in jail rather than return to him; and it is not likely that she voluntarily suffered him to deal with her property. Similarly, there appears to be reasonable ground for supposing that her health and safety would be endangered if she were compelled to return to him. He and she are on the worst possible terms, and there can be no natural love or affection between them, and in his house she would be completely in his power. There is too much reason for supposing that the plaintiff's desire in pressing the suit is to get hold of defendant's property rather than to have her to live with him, and as she has executed a deed disposing

of this property it is more than likely that he would subject her to distress to induce her to cancel the deed in his favour. It is contended on plaintiff's behalf that defendant is really an unwilling tool in the hands of her relations, and is being opposed by them. That is of course a possibility, but there is no evidence to enable me to say that it is in fact the case.

"There is every reason to suppose that she left the plaintiff voluntarily and that so far at any rate she was in no way coerced by her relations. If she is ill-treated by them in future, she will have only herself to thank. It seems to me that it would not to be safe, having regard to all that has happened, to order her to be delivered over to the plaintiff."

Dr. *S. M. Sulaiman*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru* and Pandit *Kailas Nath Katju*, for the respondent.

PIGGOTT and WALSH, JJ.:—This was a suit by a Muhammadan husband for restitution of conjugal rights in which, by our order of the 8th of August last, we thought it necessary to remit certain issues for more specific findings by the lower appellate court. Those findings have now been returned, and we are satisfied that they cannot be successfully assailed on the grounds taken in the petition of objections filed by the plaintiff appellant. We desire to refer to the case of *Armour v. Armour* (1) as laying down sound principles of law which we accept and propose to apply to the facts found in this case by the learned District Judge. We think the findings of the learned District Judge proceed upon evidence and are not vitiated by any erroneous view of the law. We must accept his finding that the defendant has reasonable grounds for believing that her health and safety would be endangered if she returned to her husband's custody, and in our opinion this finding disposes of the appeal. We dismiss the appeal accordingly with costs.

*Appeal dismissed.*

(1) (1914) 1 A. L. J., 318.

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