

1921

MUHAMMAD  
MUJIB-UD-DIN

v.  
JAMAL  
FATIMA

because it encouraged a separation between the husband and his wife. The agreement in the present case was executed before marriage in order to restrain the prospective husband from ill-treating his wife or behaving improperly towards her or capriciously turning her out. The dower debt payable to the plaintiff was undoubtedly some security against a capricious divorce, but that was evidently not considered enough to protect her from ill-treatment; and the agreement in question was obtained to secure her against ill-treatment and to ensure for her a suitable amount of maintenance in case such treatment was meted out to her. In view of the circumstances established, we do not consider that the agreement in the present case offended against the provisions of section 23 of the Indian Contract Act (No. IX of 1872) or encouraged or facilitated a separation between the plaintiff and her husband. The material rights ended with the divorce; but the contract subsists till the plaintiff dies or breaks it, and so long as the right to maintenance lasts, it cannot be treated as devoid of consideration or opposed to public policy. The finding of the court below that the dissensions existed from the 30th of October, 1912, is conclusive and cannot be disturbed in second appeal. The appeal, therefore, fails and is dismissed with costs.

*Appeal dismissed.*

*Before Mr. Justice Tudball and Mr. Justice Sulaiman.*

LACHMAN PRASAD (PLAINTIFF) v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT).\*

*Act No. I of 1894 (Land Acquisition Act), section 9—Claim of owner filed beyond time fixed, but no objection raised before Collector—Objection not entertainable in appeal.*

In a case under the Land Acquisition Act, the owner's claim was not filed until after the period prescribed therefor, but no objection was taken on that score before the Collector. *Held* that it was too late to raise the objection when the case had come in appeal before the District Judge.

THE facts of the case sufficiently appear from the judgment of the court.

*Munshi Gulzari Lal*, for the appellant.

*Babu Lalit Mohan Banerji*, for the respondent.

\* First Appeal No. 316 of 1918 from a decree of E. H. Ashworth, District Judge of Cawnpore, dated the 5th of June, 1918.

1921

May, 12.

TUDBALL and SULAIMAN, JJ. :—This is a plaintiff's appeal arising out of a proceeding under the Land Acquisition Act. A preliminary objection is taken on behalf of the Secretary of State that, inasmuch as the owner's claim was not filed before the date fixed in the notice, the Judge should not have allowed larger compensation than that awarded by the Collector. It appears that the date fixed for the filing of the claim was 30th of October, 1917. The claim, however, was not filed till the 10th of November. It had, however, been preceded by an application, dated the 7th of November, 1917. This point, however, was not taken before the District Judge. On the other hand, the only objection raised was that the owner had not given full particulars as required by section 9 of the Act in his statement of claim and that therefore his objection was not maintainable. Had the point which is now raised before us been raised before the learned District Judge, the owner might have been in a position to satisfy the Judge that there was sufficient reason for not filing the claim before the time fixed. As the point was not raised in the court below, the Judge was not called upon to consider whether or not there were any sufficient reasons for the delay. Under the circumstances we are of opinion that we cannot go into this question as there are not sufficient materials before us.

As to the appeal, the learned advocate for the appellant has urged two points before us. The first one is that the compensation awarded for the loss of support of the wall is too low, and the second one is that the compensation awarded by the Judge should be fixed at a higher figure. As to the first point we have in evidence the statement of Mr. Parry, the Municipal Engineer, which is not rebutted, to the effect that the cost of repairing the wall will be Rs. 100 and the wall is a sufficiently thick one and does not require any other support.

On the question of compensation the owner produced a number of witnesses in order to prove that about a year before the acquisition of this land some of the neighbours were willing to offer about Rs. 15,000 for the shops which have been acquired. This oral evidence has not been corroborated by any documentary evidence. On the other hand, we find that in the years 1915 and 1916 the appellant himself objected to an assessment of the

1921

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Municipal tax on the whole house and maintained that the rent of the whole building was about Rs. 650 a year. The portion acquired is less than a third of the whole block. This shows that the rent of Rs. 36, which is now alleged to be received by him for the acquired portion, is considerably in excess of that which he received in 1915 and 1916. In fact the Collector accepted the rent alleged to have been received by the owner, with the exception of a small amount of Rs. 2-8 of which one of the tenants produced by the owner denied payment to the owner. Before us it has not been seriously disputed that the rent of the house is more than Rs. 33-8. We accordingly accept this to be the amount of rent for the portion acquired. It appears, however, that the Collector awarded compensation on the basis of 16 $\frac{2}{3}$  years' purchase and that rate has been accepted by the District Judge. In our opinion, having regard to the fact that Cawnpore is a growing town and that value of land there is increasing rapidly, the rate of 16 $\frac{2}{3}$  years' purchase was too low. At the same time we note that the area of land acquired is only 174.88 square yards and there is the finding of the District Judge that the rent of the building in question has been recently enhanced. Having regard to all the circumstances, we think that the rate of twenty years' purchase would be a fair basis of calculation. Taking the rent to be Rs. 33-8 per month and the rate at twenty years' purchase and making a deduction of Rs. 13 per cent. on account of taxes and repairs and then allowing Rs. 15 per cent. for compulsory acquisition, the total comes to Rs. 8,044. Adding to it a sum of Rs 100 found by the District Judge to be the probable cost of repair of the wall, the total comes to Rs. 8,144. We think that this is a fair amount of compensation which should have been awarded. We accordingly modify the order of the District Judge and award to the appellant a sum of Rs. 8,144. The amount found due by the learned District Judge had been taken by the appellant under protest. He is therefore entitled to interest at Rs. 6 per cent. per annum on the excess amount awarded by this Court from the 2nd of January, 1918, the date on which he took out the money. Parties will pay and receive costs with regard to their success and failure.

*Order modified.*