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BHOJ RAJ v. HARDEVA.

The defendants came up in appeal and a learned Judge of this Court has dismissed the plaintiff's claim on the ground that a zamindar cannot revoke a licence like this at his will after the tenant has enjoyed the privilege for more than twelve years. As a general proposition of the law, we cannot accept this statement of the law as correct. A licensee cannot by enjoying the licence for any length of time acquire rights adverse to that of the licensor. The question whether a certain class of land is appurtenant to the holding of a tenant is one of fact depending upon the circumstances of each particular case. In this case, as we have stated above, the lower appellate court has found that the defendants did not hold the plot in suit or the constructions thereon as appurtenances to their holding. On this finding and the further fact that the plaintiff was a transferee from the original licensor, the licence had ceased to exist by operation of law and the plaintiff was entitled to a decree. We, therefore, allow this appeal. As a claim based upon false allegations by a zamindar is one which does not meet with our approval, we refuse him his costs in all courts. The result is that the judgment of the learned Judge of this Court is set aside and the plaintiff's claim is decreed, but without costs.

Appeal decreed.

MATRIMONIAL JURISDICTION.

Before Sir Grimwood Mears, Knight, Chief Justice, Mr. Justice Walsh and Mr. Justice Gokul Prasad.

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WILLIAM FITZROY HOWARD (PETITIONER) *v.* DORIS MAY HOWARD (RESPONDENT) AND THOMAS DENNET (CO-RESPONDENT).*

Suit for dissolution of marriage—Procedure—Necessity of examining petitioner on oath.

In all divorce cases the petitioner must come into the witness-box, he must be sworn, and he must prove his case, because, amongst other things, the Judge has to satisfy himself whether there is any collusion between the parties, and he has further to satisfy himself as to the complete honesty and truth of the petition.

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

Mr. *E. A. Howard*, for the petitioner.

The respondent and co-respondent were not represented

MEARS, C. J., WALSH and GOKUL PRASAD, JJ. :—On the 24th of August, 1921, Mr. Sherring, sitting as District Judge

* Matrimonial Reference No. 11 of 1921.

at Lucknow, granted a decree *nisi* to William Fitzroy Howard. The petition set out the marriage, the cohabitation of the parties, and the birth of a child, and the subsequent death of that child, and then alleged that on the 4th of August, 1917, and on other days between that and December, 1920, the wife committed adultery with Thomas Dennet, the co-respondent "with whom she is living now and has an illegitimate child by him." There does not appear to be on the record any answer by the respondent or co-respondent. The next document we have after the register of marriage is one which is headed "In the Court of the District Judge." The suit is described as "Regular Suit No. 4 of 1921" and sets out the names of the parties and then states, "Petitioner, the respondent and the co-respondent are present." Then it immediately begins by saying that "Doris May Howard, the respondent, states that she was married to the petitioner on the 24th of April, 1916, at the Roman Catholic Church, Lucknow. Then she admits that she gave birth to a female child on the 3rd of July, 1920, and that the petitioner is not the father. She denies ever having had connection with the co-respondent. Thomas George Dennet denies ever having had connection with the respondent since her marriage with the petitioner. Mr. Ali Ausat states that he does not wish to take action as regards the co-respondent and claims no damages against him. The co-respondent admits that he lives in Lucknow." That is apparently the whole of what Mr. Sherring thought to be evidence in the case. On the contrary, not a word of it is evidence. In all divorce cases the petitioner must come into the witness-box, petitioner must be sworn and he must prove his case, because, amongst other things, the Judge has to satisfy himself whether there is any collusion between the parties, and he has further to satisfy himself as to the complete honesty and truth of the petition. Here the petitioner does not appear to have gone into the witness-box. The respondent does not appear to have been put on oath, nor does the co-respondent; and in this state of circumstances Mr. Sherring thought that he was entitled to grant the petitioner a decree. We are of opinion that the decree *nisi* must be set aside, and having regard to the admission of Mr. Ali Ausat, the petitioner may find himself in a difficulty in regard to the institution of another suit, because if he now commences fresh proceedings and makes Mr. Dennet co-respondent, some questions will

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necessarily arise as to what happened when on the 24th of August, 1921, Mr. Ali Ausat was content that the co-respondent should be dismissed from the suit and that the decree *nisi* should be passed upon the basis that the child born on the 3rd of July, 1920, was the child of some unknown man. In the circumstances Mr. Howard is at liberty, if he is so minded, to file a fresh petition; but he must insert in that petition a statement of the institution of this suit and its result,—that is in accordance with the divorce practice as it prevails in England,—and if he proposes to proceed on the basis of his wife's adultery with a man unknown, he must obtain leave from the Court to dispense with the making of a co-respondent. At the same time we think it right to point out that this case, both as regards the materials in the petition and as regards the statements of the parties, leaves us in some doubt as to the good faith of the parties, and it is very necessary, if there is another attempt of Mr. Howard to obtain a decree *nisi*, that he should put the whole of his case in the greatest fullness of detail before the Court. The decree *nisi* is therefore set aside. We direct that a copy of this judgment be sent to Mr. Sherring personally by registered post.

APPELLATE CIVIL.

Before Mr. Justice Ryves and Mr. Justice Stuart.

HARI RAM AND OTHERS (PLAINTIFFS) *v.* INDRAJ AND OTHERS (DEFENDANTS).*

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June, 7.

Mortgage—Redemption—Second suit for redemption after dismissal of first suit for failure to pay the amount decreed—Res judicata.

Where the decree in a suit for redemption of a mortgage merely provided that in default of payment of the mortgage money due the suit should be dismissed, and the money was not paid and nothing further was done, it was *held* that it was open to the mortgagor to sue again for redemption of the same mortgage. *Sita Ram* v. *Madho Lal* (1) followed.

THE facts of this case are fully set forth in the judgment of RYVES, J.

Dr. *Surendra Nath Sen*, for the appellants.

Mr. *E. A. Howard*, for the respondents.

* Second Appeal No. 437 of 1921, from a decree of E. R. Neave, District Judge of Meerut, dated the 17th of January, 1921 confirming a decree of P. K. Ray, Subordinate Judge of Meerut, dated the 15th of June, 1920.

(1) (1901) I. L. R., 24 All., 44.