

1935

IN THE  
GOODS OF  
MADHO  
PRASAD

Dissenting from the view expressed by the Full Bench in *Keshavalal's* case (1), and adopting the principle of the decision of BEAMAN and HAYWARD, JJ., in *Kashinath Persharam v. Gouravabai* (2), we hold that the applicant must pay court fee. If the court fee is not paid, letters of administration shall not be issued. We allow two months for payment of the court fee.

## MATRIMONIAL JURISDICTION

Before Mr. Justice Thom

1935  
January, 25

DOROTHY E. STUART (PETITIONER) *v.* VERNON R. STUART (RESPONDENT)\*

*Divorce—Wife's petition—Parties—Intervention—Person named in plaint as having committed adultery with the respondent but not impleaded—Application by such person to be added as a party—Civil Procedure Code, order I, rule 10—Divorce Act (IV of 1869), sections 7, 45.*

Where a wife's petition for divorce names a particular woman as a person with whom the husband has committed adultery, it is doubtful whether the person so named has the right under the law as it stands, namely the Indian Divorce Act and the Civil Procedure Code, to claim to be added as a party to the divorce proceedings in order to defend her character against the aspersions made by the petitioner.

The English Divorce Act contains a section which specifically gives the court power to permit such a subsequent intervention. Without pronouncing a definite opinion on the question, it would appear that by virtue of section 7 of the Indian Divorce Act a similar rule or principle could be acted upon by divorce courts in India, and there was no reason to think that the section referred only to matters of substantive law and not to matters of procedure.

It may be that under order I, rule 10(2) of the Civil Procedure Code the court can of its own motion direct such named person to be added as a party.

*Quære*, whether under section 45 of the Indian Divorce Act the Civil Procedure Code would regulate proceedings in the matter of adding parties also, or would only regulate proceed-

\*Matrimonial Suit No. 7 of 1934.

(1) (1923) I.L.R., 48 Bom., 75. (2) (1914) I.L.R., 39 Bom., 245.

ings after the parties had been determined in accordance with sections 10 and 11 of the Indian Divorce Act.

Mr. *O. M. Chiene* and Miss *L. W. Clarke*, for the petitioner.

Mr. *M. A. Ansari*, for the respondent.

Mr. *K. O. Carleton*, for Mrs. Mary Ivy Surdivall, intervenor.

THOM, J.:—This is an application under order I, rule 10 of the Code of Civil Procedure by one Mrs. Mary Ivy Surdivall of E. I. Railway Control Quarters, Forsyth Road, Lucknow. The applicant prays that this Court should direct that she be made a party to the Matrimonial Suit No. 7 of 1934, in which Mrs. D. E. Stuart is the petitioner and Mr. V. R. Stuart the respondent.

In her petition Mrs. Stuart has made allegations of adultery against the applicant Mrs. Surdivall and in these circumstances counsel has argued that, under the provisions of the Code of Civil Procedure and the Indian Divorce Act, this Court should grant the prayer of the applicant and direct that Mrs. Surdivall be made a party to the divorce proceedings.

Learned counsel for the petitioner in the first instance opposed this application. He contended that under the provisions of the Code of Civil Procedure and the Indian Divorce Act this Court had no jurisdiction to permit the intervention of a person who had been named by a petitioning wife in divorce proceedings. In support of his contention he referred to the case of *Ramsay v. Boyle* (1). In that case a Full Bench held that the High Courts in India had no power under the Civil Procedure Code and the Indian Divorce Act to permit the intervention of the person named by the petitioner in a divorce petition and who had not been called as a co-respondent by the petitioner.

In the English Divorce Act there is a section which specifically gives the court power to permit a subsequent

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intervention. There is no such specific section in the Indian Divorce Act. Section 7 of the Act, however, does make a certain provision for following the rules and principles, which are applied in the English court for divorce and matrimonial causes, in India. The section runs as follows: "Subject to the provisions contained in this Act the High Courts and district courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said courts, are, as nearly as may be, conformable to the principles and rules on which the Court for divorce and matrimonial causes in England for the time being acts and gives relief." Learned counsel for the petitioner has contended that this section refers to substantive law and is not concerned with matters of procedure. He has argued that the permission to a party to intervene is a matter of procedure, not of substantive law. As at present advised I am unable to agree with this contention. The word used in the section is "act" and I see no reason whatever for restricting that word as suggested by learned counsel for the petitioner.

Section 45 of the Indian Divorce Act is in the following terms: "Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure."

Now in the judgment in the case of *Ramsay v. Boyle* (1) it was held that the words "all proceedings under this Act between party and party" in section 45 apply only to proceedings after the parties to the suit have been determined, and that the parties can only be determined in accordance with the provisions of that particular statute and particularly of sections 10 and 11.

The present application is under order I, rule 10, sub-clause (2). Under this sub-clause the court may at any stage of the proceedings direct that the name of any person who ought to have been joined whether as

plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. It may be that under this provision the court can *ex proprio motu* direct that the person named by the petitioner in the plaint be added as a party to the proceedings. This matter, however, is not free from difficulty and, in view of the decision in *Ramsay v. Boyle* (1) by a Full Bench of the Calcutta High Court, I would be inclined to refer the question of the power of the court to add to the array of parties the name of the person mentioned in the plaint, to a Full Bench. This course, however, would delay the proceedings in the present petition. It is in the interests of the parties that the petition should be disposed of by the court with all possible expedition. Mr. *Chiene* for the petitioner has stated that, in the circumstances, he is willing to withdraw all allegations made against the applicant Mrs. Surdivall. He has stated that he has other evidence upon which his client is entitled to a decree of divorce, and in order to avoid delay he is willing to withdraw all allegations of adultery so far as these allegations have been directed against Mrs. Surdivall. In these circumstances it is unnecessary to make any orders upon the present application.

I may say that the question raised by this application is one of great importance. In my opinion it is clearly in the interests of justice that a party who is named in a divorce plaint as being one of the persons with whom the respondent is alleged to have committed adultery should be allowed to intervene and defend his or her character against the aspersions which have been levelled against him or her. It appears that, at least, there is very grave doubt whether the person so named has the right under the law, as it stands at present, to claim to be added as a party to the divorce proceedings. If the

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law is in doubt upon this point it is clearly the duty of the legislature to amend the Indian Divorce Act and make provision similar to the provision in the English Divorce Act to enable parties named in the divorce petition to be added to the parties to the proceedings.

I make no order as to costs.

### MISCELLANEOUS CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice and  
Mr. Justice Bennet*

1935  
January, 28

REFERENCE UNDER THE CIVIL PROCEDURE CODE\*

*Stamp Act (II of 1899), article 57, exemption (e)—Surety for an officer of Government—Exemption from stamp duty—Security bond by custodian of property attached by court amin—Civil Procedure Code, order XXI, rules 43, 122, 123.*

In execution of a decree movable property of the judgment-debtor was attached by the court amin and handed over by him to a custodian who executed a *supurdnama*, undertaking to produce the property whenever demanded by the court or the amin and declaring that in case of failure the court could realise the value from his person and property. Approval of the court was obtained to this arrangement, as required by order XXI, rules 122 and 123, of the Civil Procedure Code:

*Held*, that the position of the custodian was that of a surety for the amin, and the document was a security bond executed by a surety for an officer of Government and was exempt from stamp duty under exemption (e) of article 57 of the Stamp Act.

The Government Advocate (Mr. Muhammad Ismail), for the Crown.

SULAIMAN, C.J., and BENNET, J.:—This is a reference by the Munsif of Ghaziabad under order XLVI, rule 1, of a question of law which arose before him when executing a decree. A simple money decree had been put in execution and certain movable property of the judgment-debtor was ordered to be attached. The amin went to the spot and attached the property and handed over the same to a *supurddar* who executed a

\*Miscellaneous Case No. 307 of 1934.