

1934

MUNICIPAL
BOARD,
BAREILLY
v.
ABDUL
AZIZ
KHAN

makes an exception in case of suits of which the cognizance is either expressly or impliedly barred.

The application is accordingly dismissed with costs.

MATRIMONIAL JURISDICTION

Before Mr. Justice Young, Mr. Justice Thom and Mr. Justice Bennet

1934
March, 21

PUSHONG v. PUSHONG AND FARRELL*

Divorce Act (IV of 1869), section 17—Confirmation of decree for dissolution of marriage—Practice—Application of guilty party for confirmation of decree—Not maintainable.

It is contrary to principle that a marriage should be dissolved on the motion of the guilty party. An application by a guilty respondent to a divorce petition, for confirmation under section 17 of the Divorce Act of a decree for dissolution of marriage passed by the District Judge, does not lie.

Mr. *Saila Nath Mukerji*, for the applicant.

YOUNG, THOM and BENNET, JJ.:—This is an application by a guilty respondent to a divorce petition, for confirmation of the decree of the learned District Judge. The only point for our decision is whether such an application lies. Section 17 of the Indian Divorce Act, under which this application is made, enacts as follows: "Every decree for dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court." There is nothing in the wording of the section itself which gives any guidance as to which of the parties to a divorce petition may move the court. We have, therefore, to look to the practice as it exists in England for guidance in this matter. The practice in England is clear. It has for long been held in England that only the innocent party can move the court for a decree absolute. The court will not listen to the guilty party. We may refer here to the well known case of *Ousey v. Ousey* (1). The learned Judge Ordinary in that case said as follows: "The principle that the

*Matrimonial Reference No. 1 of 1930.

(1) (1875) 1 P.D., 56.

powers of the court are to be exercised only on behalf of the innocent is illustrated by the case of *Hulse v. Hulse*, where the court refused to make a decree absolute on the ground that the petitioner had been guilty of adultery after the decree *nisi*. If then I were to make the decree absolute at the instance of the respondent, I shall be in effect giving relief not to the innocent but to the guilty, and upon the ground of her own guilt." That case has been followed in numerous other cases, notably in *Lewis v. Lewis* (1) and *Rutter v. Rutter* (2). It appears to us that this principle should be followed in India on an application to confirm a decree by a lower court, under section 17. Until confirmation of decree the proceedings are not finished, the marriage is not dissolved, and it appears to us to be contrary to principle that a marriage should be dissolved on the motion of the guilty party. On this ground, therefore, we hold that this application does not lie, and we dismiss it accordingly.

1934

PUSHONG
v.
PUSHONG

APPELLATE CIVIL

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

SHANKAR LAL AND OTHERS (APPLICANTS) v. SHYAM SUNDAR
LAL. (OBJECTOR)*

1934
March, 23

*Civil Procedure Code, section 47; order XXII, rules 5, 12—
Execution of decree against assets of deceased judgment-
debtor—Dispute between two persons each claiming to be
heir—Decision by execution court of such dispute—Appeal.*

In course of execution of a decree a dispute arose between two persons as to which of them was the heir of the deceased judgment-debtor; the decree-holder sought to execute the decree against the assets of the deceased judgment-debtor and had impleaded both these persons. The execution court went into this question and determined it in favour of one of the persons. *Held*, that the dispute was not one between the decree-

*First Appeal No. 391 of 1933, from a decree of Muhammad Taqi Khan, Subordinate Judge of Farrukhabad, dated the 10th of March, 1933.

(1) [1892] P., 212.

(2) [1921] P., 421.