

tionship between the parties was really not that of partners because the defendant stated in his examination that "out of the joint funds the property had been purchased". We have not found it necessary to remit any such issue. We have heard the entire evidence of the defendant and we are of opinion that the statement quoted above was only a part of the defendant's general case. The statement was never meant to be a separate or independent plea raising an independent issue.

The result is that the appeal succeeds. We set aside the decree of this Court and the decree of the learned Subordinate Judge and restore the decree of the Munsif decreeing the plaintiff's suit with proportionate costs. The appellant will have his costs in the court of the Subordinate Judge and at the two hearings of this Court proportionate to his success and shall pay costs to the respondent in proportion to the latter's success.

REVISIONAL CRIMINAL

Before Mr. Justice King

MATUK DEO SINGH *v.* VINAYAK PRASAD SINGH
AND OTHERS*

1934
February, 24

Child Marriage Restraint Act (XIX of 1929), section 5—Marriage performed in Azamgarh district—Tilak ceremony performed at Benares—Offence triable at Azamgarh—Criminal Procedure Code, sections 177, 179 and 182.

In a case where a child marriage was solemnized at a place in Azamgarh district, but the *tilak* ceremony had been performed in Benares district, the offence of performing, conducting or directing the child marriage was committed in the Azamgarh district, and under section 177 of the Criminal Procedure Code the offence was triable by a court in Azamgarh district. For purposes of section 5 it is only the marriage ceremony that has to be considered. It is immaterial where or when or by whom the *tilak* ceremony was performed. Section 179 of the Criminal Procedure Code had no application, as the marriage could not properly be called a "consequence" of the *tilak* ceremony. Section 182 did not apply, as although

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the *tilak* ceremony might be regarded as a necessary preliminary to the marriage ceremony, the actual marriage was a ceremony quite different and distinct from the *tilak* ceremony.

The parties were not represented.

KING, J.:—The accused are charged with an offence under section 5 of the Child Marriage Restraint Act, 1929. The marriage was solemnised at Ramgarh in the Azamgarh district. The offence of performing, conducting or directing the child marriage was therefore committed in the Azamgarh District, and under section 177 of the Code of Criminal Procedure the offence must ordinarily be tried by a court within the local limits of whose jurisdiction it was committed.

It is suggested that the case is also triable in the Benares district because the *tilak* ceremony took place in that district, and in view of the provisions of section 179 of the Code of Criminal Procedure. In my opinion section 179 has no application to the facts of the case. The accused are not charged with the commission of an offence by reason of having performed the *tilak* ceremony, nor can the marriage be properly called a "consequence" of the *tilak* ceremony.

Section 182 also does not apply. The alleged offence, if committed, was certainly committed in the Azamgarh district. The *tilak* ceremony may be regarded as a necessary preliminary to the marriage ceremony, but the actual marriage is a ceremony quite different and distinct from the *tilak* ceremony. The ceremonies were performed at different times and at different places. For the purpose of section 5 of the Act it is only the marriage ceremony that has to be considered. It is quite immaterial where or when or by whom the *tilak* ceremony was performed.

I think it is perfectly clear that the courts of the Benares district have no jurisdiction to try the case.

Under section 185(1) I direct that the case be tried by a court within whose jurisdiction the offence was committed, i.e. by a court within whose jurisdiction Ramgarh, district Azamgarh, is situated.