

1937

September,
21*Before Mr. Justice Niamat-ullah and Mr. Justice Allsop*

KEDAR NATH (DEFENDANT) v. SHIAM LAL (PLAINTIFF)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 5(2)—Instalment decree passed by Small Cause Court—Appeal—Forum—“Immediately subordinate”.

An appeal from an order fixing instalments, passed by a Court of Small Causes under section 5(2) of the U. P. Agriculturists' Relief Act, lies to the court of the District Judge. Under section 3 of the Civil Procedure Code the Court of Small Causes is subordinate to that of the District Judge, and it is in the same sense that the term “immediately subordinate” in section 5(2) of the U. P. Agriculturists' Relief Act must have been used.

Mr. Sri Narain Sahai, for the appellant.

The respondent was not represented.

NIAMAT-ULLAH and ALLSOP, JJ.:—This is an appeal against an order under section 5, clause (2) of the Agriculturists' Relief Act. The court from whose order this appeal has been filed was the court of small causes. It directed that the decree might be paid in certain instalments and the complaint is that these instalments do not extend over a sufficiently long period. The question before us, in the first place, is whether an appeal lies to this Court. It has been held that the court of a Civil Judge is immediately subordinate to the court of the District Judge; but the argument here is that this is a court of small causes and no appeal from it lies to the District Judge. It is therefore urged that the court of small causes is immediately subordinate to this Court which may interfere with its decision by way of revision. We do not think that this is the proper criterion for deciding what is meant by subordination according to the terms of the Agriculturists' Relief Act. Under section 3 of the Code of Civil Procedure the court of small causes is subordinate to the district court. We think that that is the sense in which the term “subordinate”

*First Appeal No. 191 of 1936, from an order of B. D. Kankon, Second Civil Judge of Cawnpore, dated the 29th of February, 1936.

must have been used in the Agriculturists' Relief Act. We therefore hold that the appeal lay not to this Court but to the district court. We return the memorandum of appeal for presentation to the proper court.

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 KEDAR
NATH
v.
SHAM
LAL

MATRIMONIAL JURISDICTION

Before Mr. Justice Harries

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WOODWARD (RESPONDENT) v. WOODWARD (PETITIONER)*

Divorce Act (IV of 1869), section 40—Life Insurance policies of husband, payable to wife in case of husband's earlier death—Whether "settlements" coming under section 40—Guilty party's application for variation—Discretion of court.

A decree absolute for divorce was made on the wife's petition on the grounds of adultery and cruelty of the husband; alimony at Rs.70 per mensem was awarded to the wife, but the custody of the children, namely two boys, was given to the husband. Subsequently he made an application under section 40 of the Divorce Act, praying that the wife should be deprived of any interest which she might have under certain policies of life insurance which had been taken out by the husband, after marriage, on his own life and under which the amount would be payable to him on a certain future date but would be payable to the wife in case the insured died before that date. It was stated that the main object of the applicant was to benefit the two children, whose names he wished to substitute for that of his wife on the policies:

Held that even if the policies of life insurance did amount to "settlements" within the meaning of section 40 of the Divorce Act,—a question which it was not necessary in the present case to decide,—this was not a fit case in which the Court should exercise the discretionary power given by section 40, in favour of the husband who was the guilty party.

The power given to the court by section 40 of the Divorce Act is a discretionary one, and the orders, if any, which it makes are such orders as the court deems fit in the circumstances of the case. There may be special cases when it would be just and proper to make an order upon the application of a guilty party varying a settlement, but unless such special circumstances exist the *status quo* should remain undisturbed. The court should not, on the application of the guilty party, deprive an

*Application in Matrimonial Suit No. 13 of 1935.