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RAM BARAN RAI v. MURLI PANDEY.

THE plaintiff in this suit claimed, *inter alia*, a declaration that he was the mortgagee of certain land by invalidation of a mortgage of such land to the defendants. The plaintiff claimed to be the mortgagee of the land under two deeds dated the 12th February, 1875, and the 24th October, 1876, respectively. The defendants claimed to be the prior mortgagees of the land under a deed dated the 24th November, 1864, the consideration for the mortgage being under Rs. 100. The plaintiff's deeds of mortgage were registered. The deed of the defendants was not registered. On second appeal to the High Court by the plaintiff it was contended on his behalf that the deed of the defendants being unregistered should be postponed to his registered deed.

Munshi *Hanuman Prasad*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Prasad*), for the respondents.

The judgment of the Court (STUART, C. J., and PEARSON, J.,) so far as it related to the contention set out above, was as follows:—

PEARSON, J.— The defendants' unregistered deed, having been executed before Act XVI of 1864 came into force, is not invalidated or postponed to the deeds recently executed in the plaintiff's favour and registered, under the *Explanation* given in s. 50, Act III of 1877.

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Before Mr. Justice Spankie and Mr. Justice Oldfield.

PAKHANDU (PETITIONER) *v* MANKI AND OTHERS (OPPOSITE PARTIES).*

Custody of minor—Minor wife—Act IX of 1861.

P. whose minor wife had refused to return to cohabitation with him on the ground that he was out of caste in consequence of having committed a criminal offence, applied to the District Court under Act IX of 1861 for the custody of her person. *Held* that that Act did not apply to such a case (1).

PAKHANDU on the 30th June, 1880, preferred a petition to the District Judge of Benares, under Act IX of 1861, for the custody of his wife Manki aged sixteen years. He stated in this petition, amongst other things, that he had been married to Manki during

* First Appeal, No. 150 of 1880, from an order of M. Brodhurst, Esq., Judge of Benares, dated the 19th August, 1880.

(1) See also *Balmakund* v. *Janki*, *ante* p. 403.

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her father's lifetime; that she had cohabited with him after the marriage; that her father had died, and some eight months ago her mother had taken her home; that he had applied to her mother to allow her to return to him, but her mother refused to allow her to do so, and her mother and sister and sister's husband prevented her from returning; that he, being her husband, was entitled to the custody of her person, and the interference of her relations was improper; and that under Act IX of 1861 he was entitled to recover possession of her person. Manki's mother opposed this application on the ground that the applicant was out of caste, and so long as he was so his wife could not return to him without losing caste herself; and that "a claim for restitution of conjugal rights could not be decided in a miscellaneous proceeding." Manki was examined and deposed that the applicant was her husband; that she had lived with him about four years; that he had been accused about a year ago of committing an unnatural offence; that for that reason her caste people were on bad terms with him; and that for the same reason she would not consent to return to cohabitation with him. The District Judge, having regard to the facts that the applicant's wife and her mother and other relations appeared to believe that the applicant had committed the offence of which he was accused, that if Manki returned to her husband she and her relations would be excommunicated by many of the brotherhood, and that there was some reason to believe that the accusation against the applicant was not "totally devoid of foundation," was of opinion that Manki ought not to be made over to the custody of the applicant against her will; and rejected the application. The applicant appealed to the High Court.

The *Senior Government Pleader* (Lala *Juala Prasad*), for the appellant.

Mr. *Dillon*, for the respondents.

The judgment of the Court (SPANKIE, J., and OLDFIELD, J.,) was delivered by

SPANKIE, J.—The application is really one for the purpose of recovering possession of a wife whose age is sixteen years, who has formerly lived with her husband, but refuses to do so on the ground

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that he is out of caste in consequence of having committed a serious criminal offence, and that if she resided with him she would lose her own caste. We do not think that Act IX of 1861 can be regarded as applying to such a case. The Act applies to any relatives or friends of the minor who may claim in respect of the custody or guardianship of such minor. The husband, if he could be held to be a relative within the meaning of the Act, does not claim possession of the girl as a minor but as his wife, who is sixteen years of age, and has lived with him as a wife in former years. Therefore the Judge's order rejecting the application, though made upon different grounds, is correct.

Application rejected.

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ebruary 1.

CIVIL JURISDICTION.

Before Mr. Justice Spankie and Mr. Justice Oldfield.

IN THE MATTER OF THE PETITION OF MADHO PRASAD.

Sanction for prosecution—Act X of 1872 (*Criminal Procedure Code*), *ss* 468,469—*High Court's powers of revision—Act X of* 1877 (*Civil Procedure Code*), *s.* 622.

The discretionary power of a Civil Court, before or against which an offence mentioned in ss. 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X of 1877.

THIS was an application to the High Court for the revision under s. 622 of Act X of 1877 of an order of Lieutenant-Colonel F. Wheeler, Judge of the Cantonment Court of Small Causes at Cawnpore, dated the 24th December, 1880. It appeared that the applicant, one of the plaintiffs in a suit which had been instituted in the Cantonment Court of Small Causes at Cawnpore, had on the 23rd December, 1880, applied to the Judge of that Court for sanction to prosecute the defendant in that suit for fabricating false evidence. On the same day the Judge made an order granting the required sanction. On the following day, the 24th December, the Judge, stating that such sanction had been granted by mistake, and that there was nothing to show that the defendant had fabricated false evidence, made an order setting aside his previous order granting such sanction.

The grounds on which revision of the order of the 24th December was sought were (i) that the Judge of the Small Cause Court