APPELLATE CIVIL

Before Mr. Justice E. M. Nanavutty and Mr. Justice Ziaul Hasan

1936
September 16

MRS. MARY BROWNE (PETITIONER-APPELLANT) *v.* A. N. BROWNE (RESPONDENT)*

Divorce Act (IV of 1869), section 22—Suit for dissolution of marriage on the ground of adultery and cruelty—Charge of adultery not proved—Husband found guilty of cruelty—Wife not entitled to decree for divorce but entitled to decree for judicial separation—Judicial separation, whether should have been specifically prayed for.

Where in a suit for dissolution of marriage by the wife against her husband the charge of adultery against the husband breaks down completely but it is proved that he was ill-treating his wife and beat her on various occasions and was guilty of cruelty towards the wife, though not entitled to a decree for divorce, she is entitled to a decree for judicial separation under section 22 of the Indian Divorce Act. In such a case it is not necessary for the wife specifically to pray for a decree for judicial separation in the original petition. *Foster* v. *Foster* (1), *Fowle* v. *Fowle* (2), and *Macnaghten* v. *Macnaghten* (3), referred to.

Mr. *R. I. Wahid,* for the appellant.

Mr. *H. G. Walford,* for the respondent.

NANAVUTTY AND ZIAUL HASAN, JJ.:—This is an appeal against a judgment and decree of a learned Judge of this Court sitting on the original side dismissing the petition of the petitioner-appellant, Mrs. Mary Browne, praying for the dissolution of her marriage with the respondent on the ground of adultery with one Mrs. Eva Browne and of cruelty towards the petitioner.

We have heard the learned counsel for the appellant as well as of the respondent and have carefully examined the evidence on the record, both oral and documentary.

*First Civil Appeal No. 107 of 1934, against the decree of the Hon'ble Mr. Justice H. G. Smith, Judge of this Hon'ble Court (sitting on the original side), dated the 20th of August, 1934.

(1) (1927) 1 Luck. Cas., 685. (2) (1878) I.L.R., 4 Cal., 260.
(3) (1901) 6 C.W.N., cxlvi.

The documentary evidence, upon which the appellant relies in proof of her charge that the respondent committed adultery with Mrs. Eva Browne, consists of certain letters, exhibits 5, 6, 7, 8 and 9.

Exhibit 5 is a letter written by the respondent's father to the respondent. It merely upbraids the respondent for his wickedness and for his having lost his good name for the sake of a wicked woman. It does not specifically state who that wicked woman is, and the writer of this letter, Mr. J. Browne, has deposed in court that whatever he wrote to his son was based upon hearsay. It is obvious that this letter, exhibit 5, cannot be of any help to the appellant in proving that the respondent committed adultery with the widow Mrs. Eva Browne.

Exhibit 9 is a post card written by Mr. J. Browne to the brother of the petitioner-appellant. This post card also does not help the petitioner-appellant in proving that her husband committed adultery with any woman.

Exhibit 8 is a letter written by the respondent's father to the mother of the petitioner. It merely states that if his son wrote to the writer lovingly he would pardon him and enquires whether his son Nelson had got rid of Mrs. Eva Browne. This letter may create suspicions against the respondent, but it does not go to prove that he at any time committed adultery with Mrs. Eva Browne.

Exhibit 7 is a letter dated the 2nd of February, 1932, written by the respondent's father to the respondent. In this letter the respondent's father complains that the respondent is feeding others at the cost of his own children. This also does not prove the case of adultery set up by the appellant.

Stress has been laid upon the letter (exhibit 16) written by the Reverend Mr. Shaw to the Special Magistrate, Rai Bahadur Pandit Jagpal Krishna, dated the 5th of May, 1932, in which Mr. Shaw stated that Mr. Browne, the respondent, rejected the proposal to leave Mrs. Eva Browne at once and to live with his wife and children

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as a husband should. This letter by itself does not go to prove any act of adultery on the part of the respondent.

Reliance has been placed upon the evidence of the Reverend Mr. Shaw. Mr. Shaw has deposed that the impression created on his mind by the words of the respondent that he could not leave Mrs. Eva Browne was that he thought that the respondent was living in adultery with Mrs. Eva Browne. The mere impression of the witness is no proof of the commission of adultery by the respondent any more than the belief of the petitioner that her husband committed adultery is proof of that fact.

This is all the documentary evidence on the record in support of the allegation of adultery, and in our opinion it entirely fails to substantiate that charge against the respondent.

Coming now to the oral evidence on the record in proof of adultery, we find that the only witness who was examined on that point is P. W. 7, Mr. Charles Gallimore. The evidence of this witness has been disbelieved by the learned trial Judge, and we, therefore, cannot attach any importance to his deposition. Even if his evidence were to be accepted at its face value, it only amounts to this that he saw on one occasion the respondent kissing Mrs. Eva Browne. We are not prepared to assume from that fact that the respondent had any adulterous connection with Mrs. Eva Browne.

We, therefore, hold, in agreement with the learned trial Judge, that the charge of adultery brought by the appellant against her husband breaks down completely.

We come next to discuss the allegation of cruelty brought by the appellant against her husband. The husband on this point is very strong. The appellant alleged that she had been assaulted by her husband in September 1931, March, 1932 and on one occasion in June, 1932, and lastly in September, 1932. She made a report at the police station in respect of an assault on her person on

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the 2nd of March, 1932, and there is the evidence of Dr. Ram Das Pramanik that he found some injuries on the person of the appellant when he examined her on the 4th of March, 1932. The assault of the 12th of June, 1932, has been deposed to by P. W. 5 Mrs. Vaz, and P. W. 6 Mrs. Siqueira. A report of the assault was also made at the police station by the petitioner-appellant. The evidence of the petitioner-appellant in respect of this assault is to the effect that her hands were tied with a chain and her feet with a rope and she was kept hanging in a doorway until Mrs. Siqueira came to her rescue. The learned trial Judge has in respect of this incident observed as follows:

"I have no reason to doubt that the petitioner on that day at least was treated by the respondent in a very outrageous manner."

We entirely endorse that observation of the learned Judge. He has, however, come to the conclusion that it is not enough that a few isolated acts of violence should be proved in order to establish a case of legal cruely such as would entitle the petitioner to the decree she asks for, and in this connection he has relied upon a single Judge decision of this Court reported in *Foster* v. *Foster* (1). In this case it was held that cruelty may be defined as conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of danger, and in order to establish a case of cruelty against her husband justifying dissolution of marriage a wife must prove more than isolated acts of violence. We may accept as correct the definition of cruelty laid down in Halsbury's Laws of England, Volume 16, paragraph 975, which has been cited with approval in the ruling quoted above. In our opinion, however, the conduct of the respondent in the present case in ill-treating his wife and beating her on various occasions does amount to cruelty and does entitle the petitioner to a decree for judicial separation under section 22 of the Indian Divorce Act (IV of 1869).

(1) (1927) 1 Luck. Cas., 685.

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In *Fowle* v. *Fowle* (1), it was held that a wife, who was unable to prove her case fully for the grant of a decree for divorce, may be given a decree for judicial separation. In the present case we are satisfied upon the evidence on the record that the appellant has proved that her husband has been guilty of cruelty towards her on several occasions, and we consider that the acts of the respondent do amount to legal cruelty sufficient to justify us in passing a decree for judicial separation under section 22 of the Indian Divorce Act. It has been argued on behalf of the respondent that the petitioner-appellant did not ask for a decree for judicial separation either in the original petition for divorce or in the memorandum of appeal to this Court. In our opinion, however, it was not necessary for the appellant specifically to pray for a decree for judicial separation in the original petition. Counsel for the appellant now verbally requests us to grant his client a decree for judicial separation on the ground of cruelty, and we are satisfied upon the evidence on the record that cruelty has been established and we think that in all the circumstances of the case the appellant should be granted a decree for judicial separation on the ground of the cruel treatment meted out to her by her husband. The evidence on the record satisfies us that the respondent was habitually cruel to the appellant and his assaults on the person of his wife amount in law to cruelty. It has been held that the striking of blows is sufficient legal cruelty to justify the grant of a decree for judicial separation. Cruelty is in its character a cumulative charge, and where, as in the present case, the husband has been guilty of repeated acts of violence against his wife leading to a reasonable apprehension of danger to life, limb or health, then those acts must amount to cruelty. In *Macnaghten* v. *Macnaghten* (2), the wife gave evidence to prove that her husband had struck her more than once. The jury found that the blows had been struck. The President

(1) (1878) I.L.R., 4 Cal., 260. (2) (1901) 6 C.W.N., cxlvi.

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of the Divorce Court came to the conclusion that legal cruelty had been proved and judicial separation was granted with costs. In our opinion the circumstances of this case show that the petitioner-appellant is entitled to the protection of the court in view of the evidence adduced by her in this case.

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For the reasons given above, while we dismiss the appeal of the petitioner for the grant of a decree for divorce, we grant the petitioner-appellant a decree for judicial separation with costs of both the courts.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge and Mr. Justice H. G. Smith

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September 17

PANDIT SUKHNANDAN PRASAD SHUKLA (PLAINTIFF-APPELLANT) *v.* RAJA AHMAD ALI KHAN (DEFENDANT-RESPONDENT)*

Limitation Act (IX of 1908), section 19—United Provinces Court of Wards Act (IV of 1912), section 52—Acknowledgment—Estate under management of Court of Wards—Letter signed by Special Manager, Court of Wards, to creditor admitting his claim—Post card signed by Court of Wards officials communicating Board's acceptance of his claim to creditor—Letter and post card, whether sufficient acknowledgment under section 19—Notice under section 17, Court of Wards Act—Claim put in and admitted by Court of Wards—Estate subsequently released without discharging creditor's claim—Limitation—Time from publication of notice under section 17 up to release of estate, whether to be excluded under section 52, Court of Wards Act.

Where a letter to the creditor of the estate under the management of the Court Wards, intimating that his claim has been admitted subject to the confirmation of the Board of Revenue, is signed by the officer acting under the Deputy Commissioner

*Second Civil Appeal No. 375 of 1934, against the decree of M. Mohammad Abdul Haq, Additional District Judge of Lucknow, dated the 20th of October, 1934, reversing the decree of Babu Mahabir Prasad Varma, Civil Judge of Lucknow, dated the 30th of May, 1933.