

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

A. MOUNA, PLAINTIFF, v. J. E. MOUNA, DEFENDANT.*

1912.

July 23.

Indian Divorce Act (IV of 1869), section 3 (2)†—Political Resident at Aden—District Judge—Jurisdiction to try suits under Indian Divorce Act—Aden Courts Act (II of 1864), section 3.‡

The Political Resident at Aden, not having been appointed "a Commissioner of a Division" is not a District Judge as defined in section 3, sub-section 2, of the Indian Divorce Act, 1869, and has no jurisdiction to try suits under the Act.

THIS was a reference made by Major-General Sir James A. Bell, Political Resident at Aden.

The plaintiff brought a suit against her husband in the Court of the Political Resident at Aden, for judicial separation under the Indian Divorce Act, 1869. The defendant filed his written statement in due course.

At this stage, the Political Resident at Aden found it necessary to decide whether he had jurisdiction to hear the suit, the settlement of Aden being a Non-Regulation Province. There was no notification, which appointed the Political Agent of Aden "a Commissioner of a Division" for the purposes of the Indian Divorce Act.

Under these circumstances, the Political Resident at Aden referred the following question to the Bombay High Court for opinion:—

* * Civil Reference No. 1 of 1912.

† The Indian Divorce Act (IV of 1869), section 3, clause 2, runs as follows:—
"District Judge" means—

* * * * *
in the Non-Regulation Provinces, other than Sindh and Burma—a Commissioner of a Division.

‡ The Civil and Criminal Justice Aden Act (II of 1864), section 3, is in the following terms:—

The Resident may hear and determine, in the first instance, all cases instituted in the Court of the Resident, of whatever nature and whatever may be the amount or value of the property in dispute.

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“Whether or not the Court of the Resident, Aden, exercising the powers of a District Judge, has jurisdiction to try and determine suits on applications presented to it under the Indian Divorce Act, 1869.”

On the question referred, the opinion of the Political Resident at Aden was in the affirmative for the following reasons :—

“In the opinion of this Court, section 3 of the Aden Act II of 1864, which empowers the Resident to hear and determine all cases instituted in the Court of the Resident, Aden, of whatever nature, gives jurisdiction to try cases falling under the Indian Divorce Act IV of 1869 ; because the words ‘of whatever nature’ are wide enough to include those referred to in the latter Act. Under these circumstances I am of opinion that the answer to the question is in the affirmative.”

The reference was heard.

Ratanlal Ranchhoddas, amicus curiæ, for the plaintiff.

N. K. Mehta, amicus curiæ, for the defendant.

CHANDAVARKAR, J. :—We are indebted to each of the learned pleaders, Mr. Ratanlal and Mr. N. K. Mehta, for having assisted us with his arguments as *amicus curiæ* in this reference. The question is whether the Resident at Aden has jurisdiction to try and pass decrees in cases of divorce under the Indian Divorce Act (Act IV of 1869). Section 3 of the Aden Act (Bom. Act II of 1864), which is an Act to provide for the administration of Civil and Criminal justice at Aden, enacts that the Resident may hear and determine, in the first instance, all cases instituted in his Court, of whatever nature and whatever may be the amount or value of the property in dispute.

The Resident, in making this reference, has expressed his opinion that, under this section, his Court has jurisdiction to try suits under the Indian Divorce Act. But that interpretation of the section gives it a wider effect than could have been intended by the Legislature. The section in substance means that the Resident has jurisdiction to try suits only where he has jurisdiction given to him by law. For instance, if the words “all cases instituted in the Court of Resident” were construed to mean in their literal sense all suits instituted,

without any regard to the question of the jurisdiction of the Resident determinable from extraneous considerations, a suit for property in Bombay might also fall within the jurisdiction of the Resident if instituted in his Court. That would reduce the section to an absurdity. Therefore the section in question must have a restricted meaning given to it and that is that the Resident has jurisdiction over any suit, where the jurisdiction is conferred upon him by any law relating to that suit.

Now, suits under the Indian Divorce Act are triable under a special law. Section 3 of the Indian Divorce Act provides that suits instituted under it shall be tried by the District Judge. "District Judge" is defined to mean, in the Non-Regulation Provinces, other than Sindh and Burma, a Commissioner of a Division. Aden is a Non-Regulation Province, and therefore, a suit instituted under this Act (Act IV of 1869) can be tried only by a Commissioner of a Division, if such an authority exists there. But from information supplied to us by Government it appears that there is no officer there with that designation. It may be that the Legislature was not aware of the requirements of the Courts in Aden when it enacted Act IV of 1869. The omission of the Resident from the Indian Divorce Act may be due purely to inadvertence on the part of the Legislature. We must hold it is a *casus omissus*, the rule as to which is that the particular case thus left unprovided for can in no case be supplied by a Court of law, for that would be to make laws. Our decision cannot lead to any practical difficulty, because Government can appoint the Resident Commissioner of a Division so as to give him jurisdiction to try suits under the Indian Divorce Act. On these grounds we must hold that the Resident at Aden has no jurisdiction to try this suit, and therefore, with this answer the reference must be returned to him.

BATCHELOR, J.:—I am of the same opinion. It seems to me no answer to our view to contend that the Resident at Aden is a Commissioner for the purposes of revenue or for any other purposes whatever. He may be a Commissioner in many senses, but he is not a "Commissioner of a Division," and

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under the Indian Divorce Act only a "Commissioner of a Division" is given in Non-Regulation Provinces, such as Aden, jurisdiction to entertain a suit for divorce.

Answer accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

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 July 29.

SIDHANATH DHONDDEV GARUD (ORIGINAL DEFENDANT 1), APPLICANT,
 v. GANESH GOVIND GARUD (ORIGINAL PLAINTIFF), OPPONENT.*

Findings on issues relating to misjoinder, limitation and jurisdiction—Drawing up a preliminary decree—Material irregularity in declining to do so.

A Subordinate Judge in trying a suit gave his decision on issues relating to misjoinder, limitation and jurisdiction and directed the parties to adduce evidence relating to accounts. He was asked to draw up a preliminary decree in accordance with his findings on the issues and having declined to do so,

Held, that the Subordinate Judge committed a material irregularity in the exercise of his jurisdiction. The decision of the issues conclusively determined the rights of the parties regarding some matters in controversy so far as his Court was concerned, the decision on each of those issues was, therefore, sufficient to constitute a preliminary decree.

Per Curiam :—It is the duty of the Court, where it is applied to after the passing of a preliminary decree, to have the decree drawn up so as to enable the party aggrieved to appeal.

Bai Divali v. Shah Vishnav Marofdas⁽¹⁾, referred to.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against an order passed by N. B. Majmundar, First Class Subordinate Judge of Dhulia, in suit No. 47 of 1907.

The plaintiff brought the present suit against the defendants to recover mesne profits for three years of his share of the joint estate.

The defendants resisted the suit on the grounds *inter alia* that the Court had no jurisdiction to entertain the suit, that there was a misjoinder of the causes of action and that the claim was time-barred.

* Application No. 50 of 1912 under the extraordinary jurisdiction.

(1) (1909) 34 Bom. 182.