

1919.

us to say that this is so, for that concludes the case inasmuch as it demonstrates that the plaint was time-barred. If the appellant thinks he has a genuine grievance, his only remedy is to approach Government, and if he does so, he will find from the judgment of the District Judge a very clear statement of the facts of this case, the facts necessary to be presented to the Government.

GANESH  
SHESHO  
v.  
THE  
SECRETARY  
OF  
STATE  
FOR INDIA.

*Decree Confirmed.*

J. G. R.

---

APPELLATE CIVIL.

---

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton*

1919.

November 10.

BĀI JAMNA, WIFE OF DAYALJI MAKANJI AND DAUGHTER OF BHIMBHAI MORARJI, AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS v. DAYALJI MAKANJI (ORIGINAL PLAINTIFF) RESPONDENT<sup>o</sup>.

*Restitution of conjugal rights—Decree against wife—Injunction against wife's parents—C. sts.*

Plaintiff filed a suit against his wife (defendant No. 1) and his wife's parents (defendants Nos. 2 and 3) to obtain a decree for restitution of conjugal rights against his wife, and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house. The lower appellate Court gave the plaintiff a decree for restitution of conjugal rights and granted an injunction against defendants Nos. 2 and 3 from harbouring defendant No. 1 in their house. On appeal to the High Court,

*Held*, that the order of the Court granting an injunction against the parents restraining them from allowing their daughter to live under their roof was wrong and must be set aside.

*Yamunabai v. Narayan Moreshvar Pendse*<sup>(1)</sup>, distinguished.

<sup>o</sup> Second Appeal No. 356 of 1918.

<sup>(1)</sup> (1876) 1 Bom. 164.

SECOND appeal against the decision of G. R. Datar, First Class Subordinate Judge, A. P., at Surat, reversing the decree passed by R. R. Sane, Second Class Subordinate Judge at Surat.

1919

---

BAI JAMNA  
v.  
DAYAJI  
MAKANJI.

Suit for restitution of conjugal rights.

Plaintiff sued to obtain (1) a decree for restitution of conjugal rights against his wife, defendant No. 1, and (2) a personal injunction restraining her parents, the defendants Nos. 2 and 3, from obstructing her in living with him and allowing her to live in their house. He alleged that he was married to defendant No. 1 in 1895; that she lived with him till November 1913 and gave birth to four children during that time; that in 1913, defendant No. 1 being pregnant went to her parents, defendants Nos. 2 and 3, and there gave birth to a son in 1914; that since then she was living with defendants Nos. 2 and 3 and refused to return to the plaintiff's house. Hence the suit.

Defendant No. 1 stated that during twenty years of her married life she was very unhappy with the plaintiff; that he ill-treated and assaulted her; that after she went to her parents' house in 1913 plaintiff wrote to them and to her several libellous letters, falsely charging her with adultery and that the plaintiff had brought the suit with the object of harassing her.

The Subordinate Judge held that the defendant No. 1 had a justifying cause for refusing to reside with the plaintiff as it was proved that the plaintiff had ill-treated and assaulted her. He dismissed the suit.

On appeal, the First Class Subordinate Judge, A. P., reversed the decree holding that the alleged cruelty by defendant No. 1 was not proved and decreed the plaintiffs' claim as follows :—

“ A decree for restitution of conjugal rights as prayed for be made as against defendant No. 1, and the plaintiff be also granted an injunction as prayed for

1919.

BAI JAMNA  
?.  
DAYALJI  
MAKANJI.

restraining the defendants from harbouring defendant No. 1 in their house, I, however, order under rule 33 of Order XXI of the Civil Procedure Code that the decree against defendant No. 1 shall not be executed by detention in prison."

The defendants appealed to the High Court.

*G. N. Thakor*, for the appellants.

*Ratanlal Ranchhoddas*, for the respondent.

MACLEOD, C. J. :—The plaintiff filed this suit against his wife and his wife's parents to obtain a decree for restitution of conjugal rights against his wife, and a personal injunction restraining the parents from obstructing his wife from living with him and from allowing her to live in their house. In the first Court the suit was dismissed. In first appeal the plaintiff got a decree for restitution of conjugal rights, although the Judge directed that the decree should not be executed by detention in prison. The plaintiff was also granted an injunction restraining the second and third defendants from harbouring the first defendant in their house.

Now it appears that in 1913 the first defendant left her husband's house and went to her parents' house for her confinement, and she did not return to live with her husband before the suit was filed in 1915. She has alleged in her defence to the plaintiff's claim that the plaintiff had been guilty of cruelty towards her whilst she was living with him, and that after she left the plaintiff's house, he had written to her letters of a most indecent description accusing her of the grossest immorality. She, therefore, said that she apprehended danger to her safety if she returned to the plaintiff's house.

Now the learned first appellate Judge has apparently disregarded the effect of the letters written by the plaintiff after defendant No. 1 left his house, because

they were written after she had gone to her parents' house in the ordinary course for her confinement. He also considered that the first defendant's story as regards cruelty was untrue. That no doubt is a question of fact. But I think the way the first appellate Judge has dealt with the letters written after 1913 has caused him to err in his appreciation of the first defendant's evidence as regards what happened whilst she was living with her husband. Now it is obvious that the plaintiff was an extremely jealous person, and was always accusing his wife whilst she was living with him of immorality, and after she left his house in 1913, his letters were very obscene, and from the nature of those letters I think it may be safely inferred that there may be considerable truth in the defendant's story regarding the plaintiff's conduct while they were living together. In any event it seems clear to me that the first defendant is justified in saying that she is apprehensive that there will be danger to her health and to her happiness if she returns to live with her husband unless he entirely alters his attitude towards her, of which there does not seem much prospect. The decree as it stands cannot be executed by detention of the first defendant in prison. The result would be that the decree would be a dead-letter. The only effect of it would be to prevent the first defendant from claiming maintenance from her husband, but her pleader has said that she has no intention of claiming maintenance. If this decree remains on the record it will be an absolute farce.

Then as regards the order against the second and third defendants, that appears to me to be founded on a misapprehension of what was stated by the Court in *Yamunabai v. Narayan Moreshwar Pendse*<sup>(1)</sup>. No doubt, if a woman goes and lives with a stranger in adultery,

1919.

---

 BAI JAMNA  
 v.  
 DAYALJI  
 MAKANJI.

<sup>(1)</sup> (1876) 1 Bom. 164.

1919.

BAI JAMNA  
v.  
DAYALJI  
MAKANJI.

the husband may have a claim against that man, and may get an order from the Court restraining him from keeping the woman under his roof. But in this case the wife has gone to live with her parents, and if this injunction were to stand, the unfortunate first defendant would have nowhere to live. I presume the object of getting that injunction from the Court was to force the first defendant to go back to her husband, although it was expressly stated that she would not be imprisoned if she disobeyed the order. But if her parents were obliged to turn her out of the house, then it follows that she must either return to her husband, or go to live under the protection of some other person. Therefore in any event I should say this order against the parents restraining them from allowing their daughter to live under their roof was wrong. However that may be, in my opinion it is certainly not desirable, whatever view one takes of the case, that this decree should stand. I think on the merits it should not be allowed to stand, and even if it were good on the merits, it would remain a farce on the very finding of the Court that the first defendant shall not be compelled to obey it. We, therefore, think that the decree appealed from should be set aside and the suit dismissed. The husband always has the privilege of paying the wife's costs.

HEATON J. :—I concur.

*Decree reversed.*

J. G. R.