

and as such, the Subordinate Judge was perfectly right in declaring that the deed in question is not operative and binding upon the plaintiff.

For these reasons, we think that this appeal should be dismissed with costs. We order accordingly.

Appeal dismissed.

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[479] APPELLATE CIVIL.

Before Mr. Justice Ghose and Mr. Justice Pargiter.

GHANA KANTA MOHANTA v. GERELI.*

[19th December, 1904.]

Maintenance, suit for— Illegitimate child—Right of suit—Order of Criminal Court refusing maintenance, effect of—Criminal Procedure Code (Act V of 1893) s. 488—Civil Procedure Code (Act XIV of 1882) s. 11—Hindu Law.

Under the Hindu law as well as upon general principles, the father of an illegitimate child is bound to provide for its maintenance.

A suit lies in the Civil Court for maintenance of an illegitimate child, notwithstanding an order of the Magistrate, under section 488 of the Criminal Procedure Code, refusing to grant maintenance.

Subad Domni v. Katiram Dome (1) and Subhudra v. Basdeo Dube (2) distinguished.

[Ref. 37 Bom. 71; 83 M. L. J. 449=1918 M.W.N. 65=22 M. L. T. 293=42 I. C. 331.]

SECOND APPEAL by the defendant, Ghana Kanta Mohanta.

The plaintiff, Musammât Gereli, a minor, through her father brought a suit on the 9th August, 1900, praying for a decree directing the defendant to pay her, at Rs. 15 per annum, towards the maintenance of her illegitimate minor child alleged to have been begotten by the defendant. The child was born in March 1900.

The defendant denied that he was the father of the illegitimate child and pleaded that the suit was not maintainable, inasmuch as an application against him for the recovery of maintenance under s. 488 of the Criminal Procedure Code had been disallowed by the Deputy Commissioner.

[480] The Court of first instance held, that the suit was maintainable but dismissed it on the ground that the plaintiff had failed to prove that the defendant was the putative father of the child. But, on appeal, the Subordinate Judge accepted the plaintiff's story and gave her a decree as prayed for.

The defendant appealed to the High Court.

Babu *Manomohan Dutt*, for the appellant, contended that the order of the Magistrate under s. 488 of the Criminal Procedure Code was a bar to the suit: *Subad Domni v. Katiram Dome (1)*; *Subhudra v. Basdeo Dube (2)*; *Mahomed Abid Ali Kumar Kadar v. Ludden Sahiba (3)*. Proceedings under the provisions of section 488 of the Code of Criminal Procedure are in the nature of civil proceedings: *Nur Mahomed v. Bismulla Jan (4)*. The Hindu law, though it makes ample provision for illegitimate children born in the

* Appeal from Appellate Decree, No. 1327 of 1902, against the decree of J. C. Arbuthnot, Deputy Commissioner and Subordinate Judge of Sibsagar, dated March 20, 1902, reversing the decree of Kanak Lal Barooah, Extra Assistant Commissioner and Munsif of that place, dated Jan. 9, 1901.

(1) (1873) 20 W. R. (Cr.) 58.
(2) (1896) I. L. R. 18 ALL. 29.

(3) (1886) I. L. R. 14 Cal. 276, 289.
(4) (1889) I. L. R. 16 Cal. 781.

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family and whose paternity is not disputed, makes no provision for illegitimate children born outside the family or at least for such children whose paternity has to be traced and proved by evidence: Golap Chandra Sarkar's Hindu Law pp. 141—144. The only provision for the maintenance of such children is that contained in s. 488 of the Code of Criminal Procedure; the Civil Court, therefore cannot take cognizance of the matter.

Babu *Prasanna Gopal Roy* (Babu *Brojendra Nath Chatterjee* with him) for the respondent. Section 488 of the Criminal Procedure Code does not provide the only remedy, which a person like the plaintiff has, for enforcing a claim for maintenance of her illegitimate child. That section simply provides a summary and speedy procedure. Section 11 of the Civil Procedure Code authorizes the Civil Courts to take cognizance of all suits of a civil nature; and the suit in question being of a civil nature the Civil Court has jurisdiction to entertain it. The cases cited by the other side are distinguishable. The Hindu law allows maintenance to illegitimate children: *Mayne's Hindu Law*, s. 434.

Babu *Manomohan Dutt*, in reply.

[481] GHOSE AND PARGITER, JJ. This appeal arises out of a suit for maintenance claimed by a Hindu woman on behalf of her minor child, said to have been begotten by the defendant. An application has been made by the woman before the Magistrate under section 488 of the Code of Criminal Procedure, but that Officer disallowed the application. Subsequently, the present suit was brought in the Civil Court.

The Court of appeal below has found that the child is the illegitimate child of the defendant, and has accordingly given a decree for maintenance.

It has been contended on behalf of the defendant, the appellant before us, that the right of an illegitimate child to claim maintenance against the putative father is but the creature of the Code of Criminal Procedure, that the order of the Magistrate disallowing maintenance is conclusive, that no suit lies in the Civil Court for the same matter, and that the Hindu Law does not authorize maintenance being granted to illegitimate children. And the learned vakil has relied in support of his contention upon two cases, *Subad Domni v. Katiram Dome* (1) and *Subhadra v. Basdeo Dube* (2).

We are unable to affirm these propositions as correct. What section 488 of the Code of Criminal Procedure lays down is simply this: that an application for the grant of maintenance to an illegitimate child may be made in the Criminal Court, and, if the Magistrate finds the necessary facts proved, he may make an order for such maintenance. There is nothing in the Code of Criminal Procedure indicating that, if the Magistrate refuses to grant maintenance, his order would be conclusive so as to bar a civil suit. Under section 11 of the Code of Civil Procedure a suit lies in the Civil Court for every subject-matter of a civil nature, unless the cognizance of such suit is barred by any special enactment for the time being in force; and there is no law prohibiting such a suit as this.

If the Magistrate had made an order granting maintenance, the paternity of the child being established, possibly a suit would not lie in the Civil Court to set aside that order; but in this case the plaintiff does not ask, nor indeed is it necessary for the success [482] of her case, to have the order of the Magistrate set aside. And this, to our mind, distinguishes the case from the cases quoted by the learned vakil for the

(1) (1873) 20 W. R. (Cr.) 58.

(2) (1895) I. L. R. 18 All, 21.

appellant, where the Magistrate had made an order granting maintenance, and it was sought to have such order set aside or superseded by a suit in the Civil Court.

As to the contention raised that the Hindu law does not authorize maintenance being granted to illegitimate children, we need only refer to the case of *Chuoturya Kun Murdun Syn v. Sahab Purhulad Syn* (1), where the right of an illegitimate child to claim maintenance under the Hindu law was affirmed. But apart from the Hindu law, we should think that, upon general principles, the defendant, having begotten the child, is bound to provide for its maintenance, if that is necessary.

Upon all these grounds, we think that the appeal should be dismissed with costs. We order accordingly.

Appeal dismissed.

32 C. 483.

[483] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Mitra.

JOTINDRA MOHAN TAGORE v. BEJOY CHAND MAHATAP.*
[22nd Dec. 1904.]

Parties, addition of—Partition, suit for—Civil Procedure Code (Act XIV of 1882) s. 32—Pending litigation—Addition of party after the decree, but before it is engrossed on stamped paper—Stamp Act (II of 1899), s. 2 (15), Sch. I, Art. 45.

A suit for partition, even when the report of the Commissioners is confirmed and a decree is directed to be drawn in accordance therewith, is a pending litigation, until the Court signs the final decree.

A decree for partition, to be operative, must be engrossed on stamped paper as required by the Stamp Act and until the Judge signs the decree so engrossed, it cannot be said that the suit has terminated; and an order directing a party to be added under s. 32 of the Civil Procedure Code can be made in such a suit before it has actually terminated.

Lingammal v. Chinna Venkatammal (2), *Mihin Lal v. Imtias Ali* (3), *Oriental Bank Corporation v. Charriol* (4), *Heard v. Borgwardt* (5) and *Keith v. Butcher* (6) discussed.

[Fol. 35 Mad. 26; 2 M. L. T. 260.]

APPEAL by the plaintiff, Maharaja Bahadur Sir Jotindra Mohan Tagore.

This appeal arose out of an application in a suit for partition. On the 14th January 1901, one J. J. Winterscale brought a suit for partition in the Court of the Subordinate Judge of 24-Pergannahs, against several persons, one of whom was the present appellant. Winterscale, three days before the institution of his suit parted with a portion of his interest in favour of the Maharaja of Burdwan, who was at that time a minor under the Court of Wards. The Maharaja of Burdwan, although he was recorded [484] in the Collectorate as the proprietor of a separate estate, was however, not made a party to the suit for partition.

On the 9th August 1901 the Court passed its preliminary decree directing the appointment of Commissioners for partition by metes and

* Appeal from Order No. 176 of 1904, against the order of Behari Lal Banerjee, Subordinate Judge of 24-Parganas, dated April 19, 1904.

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| (1) (1857) 7 Moo. I. A. 18; 4 W. R. | (4) (1886) I. L. R. 12 Cal. 642. |
| (P. C.) 182. | (5) (1883) W. N. 173, 194. |
| (2) (1883) I. L. R. 6 Mad. 227. | (6) (1884) L. R. 25 Ch. D. 750. |
| (3) (1896) I. L. R. 18 All. 332 | |

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