

1908
JAN. 18.
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APPELLATE
CIVIL.
—
32 C. 422.

[424] The Subordinate Judge has given the plaintiffs a decree for the reliefs prayed for.

The defendants Nos. 2, 3 and 4 appeal to this Court and contend *first*, that the Subordinate Judge has not decided the question of the quantity of the land in dispute which was raised in the 6th issue; and *secondly*, that the order of the Collector as to the crops of 1307 was final and that the plaintiffs in this case cannot recover damages for the crops taken away by the defendants.

As to the first of these grounds, we may say that it has, we think, been decided by the Subordinate Judge that the quantity of land specified in the plaint is correct. The point does not seem to have been expressly raised or pressed before the Subordinate Judge; but at the conclusion of this judgment he says:—"The decree shall specify the quantity of land given in the plaints of each plaintiff and for which a decree is passed in his favour."

As for the second ground of appeal, the pleader for the appellant relies upon the provisions of sub-section (5) to section 70 of the Bengal Tenancy Act which lay down that the Collector may, if he thinks fit, refer any question in dispute between the parties to a Civil Court, but that order shall be final.

Now, we feel no doubt that this sub-section means that, between landlord and tenant, any matters which he may decide must be final. But however that may be, it certainly does not mean that as between tenants and third parties his decision shall be final. In support of this view we need only cite the case of *Jaga Singh v. Chooa Singh* (1) in which it has been laid down that sections 69 and 70 of the Bengal Tenancy Act refer to and contemplate proceedings between landlord and tenant and that when a plaintiff seeks relief, not against a tenant, but against a third party, the suit is not barred.

That being so, we see no reason to interfere with the lower Appellate Court. Appeal No. 2444 of 1901 and Appeals Nos. 134, 135, 138, 139, 140, 141 and 142 of 1902 are dismissed with costs. Appeals Nos. 136 and 137 of 1902 are dismissed without costs, as no one appears for the respondents in these two appeals.

Appeals dismissed.

32 C. 425 (=8 C. W. N. 515.)

[425] CRIMINAL REVISION.

Before Mr. Justice Ameer Ali and Mr. Justice Handley.

THAKUR DAS SAR v. ADHAR CHANDRA MISSRI.*

[13th April, 1904.]

Defamation—Hindu widow—Complaint by brother—"Person aggrieved"—Jurisdiction—Criminal Procedure Code (Act V of 1898), s. 198.

Where the alleged offence was defamation imputing unchastity to a Hindu widow :—

Held, that her brother, with whom she was residing at the time, was a "person aggrieved" by such imputation within the terms of s. 198 of the Criminal Procedure Code, and it was competent to the Court to take cognizance of the offence upon his complaint.

[Expl. 8 C. L. J. 38; Dist. 32 Cal. 1066=9 C. W. N. 847=2 C. L. J. 396.]

* Criminal Revision No. 292 of 1904, against the order of Ram Sadan Bhattacharjee, Deputy Magistrate of Midnapore, dated February 9, 1914.

(1) (1895) I. L. R. 22 Cal. 480.

Rule granted to the petitioner, Thakur Das Sar.

This was a Rule calling upon the District Magistrate of Midnapore to show cause why the conviction of the petitioner should not be set aside on the ground that the Court had no jurisdiction to entertain the case on the complaint of Adhar Chandra Missri.

The petitioner defamed one Soudamini Debi, a Hindu widow, by publishing certain imputations against her chastity. Soudamini was at that time living in the house, and under the guardianship of her brother, Adhar Chandra Missri who preferred a charge against the petitioner under s. 500 of the Penal Code for having defamed his sister. The petitioner was tried and convicted under the said charge.

Babu *Bidhu Bhushan Gangooly*, for the petitioner. The Court had no jurisdiction to try this case as the complaint was not preferred by the proper person. The person defamed was [426] Soudamini Debi, the sister of the complainant, and she was the proper person to complain. If s. 198 of the Criminal Procedure Code is compared with s. 199, it will be observed that there is a difference between the phraseology of the two sections. It is only in s. 199 that a provision is made for a complaint being lodged in the absence of the husband by some person who had care of the wife on his behalf at the time when the offence was committed. There is no provision of a similar character in s. 198. In the case of *Chhotalal Lalubhai v. Nathabhai Bechar* (1), a majority of the Full Bench held that when a wife was defamed the husband could complain, that was because the law considers husband and wife as one person. That rule, however, should not be extended to the complaints of other relations. The case of *Brahmanna v. Ramakrishnama* (2), though a civil case, supports my contention. Under s. 345 of the Code the only person who can compound such an offence is the person defamed. Therefore, if other persons are permitted to complain it would have the effect of making the offence non-compoundable. It is only when a deceased person is defamed that the law provides for a complaint being made by some relative or a member of the deceased family: see section 199, Exp. (1) of the Penal Code.

AMEER ALI AND HANDLEY, JJ. In this case a Rule was issued, calling upon the Magistrate of the district to show cause why the conviction and sentence of fine passed upon the petitioner should not be set aside, on the ground that the Court had no jurisdiction to entertain the case on the complaint of Adhar Chandra Missri.

The Rule was issued under the following circumstances: Adhar Chandra Missri is the brother of one Soudamini Debi. This lady happens to be a widow; and she resides with her brother the complainant. They are both Brahmins of Bengal; and according to Hindu notions, and the manners and customs of the country, Soudamini is a member of the family and practically under the guardianship of her brother. Any false charge made against her [427] reputation affects the character of the person in whose house and under whose charge she is living.

The accused, who obtained this Rule, appears to have made serious imputations against Soudamini, accusing her of immorality. Adhar Chandra Missri, the complainant, being aggrieved at the imputations against his sister, who was, as already mentioned, living in his house, preferred a complaint under section 500 of the Indian Penal Code against the accused. The trying Magistrate found the charge proved and convicted the latter.

(1) (1900) I. L. R. 25 Bom. 151.

(2) (1894) I. L. R. 13 Mad. 250.

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The present Rule was obtained on the ground that the person who ought to have made the charge was Soudamini herself, and not Adhar Chandra Missri, because Soudamini was the person defamed.

The learned Magistrate has submitted an explanation in which he points out the circumstances under which the prosecution was instituted and the case tried.

The learned pleader for the accused refers us to sections 198 and 199 of the Code of Criminal Procedure, and points out the difference between the phraseology of the two sections. Those two sections refer to two distinct kinds of offences. Section 199, in our opinion, has nothing to do with the present case. We have to deal with section 198 and see whether the complaint is properly laid under that section. Section 345 gives us no assistance, because that section deals only, with the compounding of offences. It states that when a charge of defamation is made the person who is defamed can compound it. The pleader for the petitioner states that in this particular case the person aggrieved is Soudamini and that therefore her brother was not entitled to lay the complaint under section 198; and he produces a case (1) in the Bombay series of the Indian Law Reports upon which he reasons that, inasmuch as it has been held by a majority of the Full Bench of the Bombay High Court that only a husband can lay a charge of defamation when a wife is defamed, that rule ought not to be extended to complaints of other relatives. He also relies upon the view expressed by Mr. Justice Ranade, the dissenting Judge.

We are not prepared to agree with the view expressed by the learned Judge. Whatever may be the conditions of life in the [428] Western Presidency, the learned pleader for the accused admits that the circumstances and conditions under which people live in this part of India are different. A Hindu lady residing with her father, her brother or her son is a member of his family; and her reputation is bound up with the reputation of the person in whose house and under whose charge she is living. If any imputation is made against her character, that would affect as much the relative with whom she is living as herself. In that view of the matter we think that the brother with whom this lady was living was as much aggrieved by the imputation made against Soudamini as the lady herself, and that, therefore, it was competent to the Court to take cognizance of the offence of defamation upon his complaint.

The case (2) in the Madras High Court also referred to by the pleader for the accused, relates to a suit for damages which has nothing to do with a complaint in a Criminal Court.

For these reasons, we are of opinion that the complaint was properly brought and properly tried, and that there was no want of jurisdiction in the Court trying it.

We accordingly discharge this Rule.

Rule discharged.

(1) (1900) I. L. R. 25 Bom. 151.

(2) (1894) I. L. R. 18 Mad. 250.