APPELLATE JURISDICTION. (a)

Special Appeal No. 275 of 1871.

SHERIF SAIB..............................*Special Appellant.*

USANABIBI AMMÁL and another...*Special Respondents.*

Suit by a Muhammadan female against her husband for maintenance. Defendant pleaded that he had divorced the plaintiff on the 8th January 1862. Both the Lower Courts found that no divorce had taken place upon the following facts:—Defendant went to Trichinopoly, leaving his wife at Tinnevelly. While at Trichinopoly he received letters from Tinnevelly informing him that his wife was leading an immoral life. He thereupon went before the Town Kázi of Trichinopoly, made a written declaration in the shape of a letter to plaintiff to the effect that he had divorced her, and repeated the divorce three times *successively* before the Town Kázi of Trichinopoly. Defendant directed also that the letter of divorce should be sent to the plaintiff, but there was no evidence of her having received it. *Held*, upon Special Appeal, that it was clear upon the authorities that there had been a valid divorce. The compressing the expression of the intention into one sentence seems, on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral.

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THIS was a Special Appeal against the decision of T. V. Ponnusámi Pillai, the Acting Additional Principal Sadr Amin of Tinnevelly, in Regular Appeal No. 386 of 1868, modifying the decree of the Court of the District Munsif of Tinnevelly in Original Suit No. 186 of 1867.

The suit was brought by 1st plaintiff against her husband, the defendant, to recover Rupees 500, being arrears of maintenance for five years due to her and her unmarried daughter, the 2nd plaintiff (a minor), and to establish their right to maintenance in future at the rate of Rupees 214 per annum, as well as for possession of a house valued at Rupees 8[illegible].

Defendant pleaded that 1st plaintiff had been divorced by him on the 8th January 1862; that he was not the father of the 2nd plaintiff, and that they were, therefore, not entitled to maintenance. The parties were Muhammadans.

The Munsif found that there was no legal divorce between 1st plaintiff and defendant, and gave judgment for plaintiff for the house, and for Rupees 480, arrears of maintenance, and for a future maintenance at the rate of Rupees 60 per annum to 1st plaintiff till a legal divorce might take

(a) Present: Holloway and Kindersley, JJ.

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place, and Rupees 36 to 2nd plaintiff till she should be married and removed by her husband to his house.

The defendant appealed. The Principal Sadr Amin, in modifying the original decree, delivered a judgment from which the following passages are taken :—

"The parties to this suit are Muhammadans, and the questions for determination, therefore, are, 1st, whether 1st plaintiff has been legally divorced by defendant, and 2nd, whether defendant is not the father of the 2nd plaintiff.

"The defendant affirms that he married 1st plaintiff in the month of August 1860, and discovering her infidelity towards him some four months after marriage, took her away from the town to a village which belonged to him, and lived there with her for some months, when 1st plaintiff insisted upon going back to the town to see her mother, notwithstanding his repeated advice not to do so ; that he accordingly sent her away to her mother's house, and sometime afterwards went to Trichinopoly to get himself re-married, where he received several letters from his relatives and friends at Tinnevelly, informing him that 1st plaintiff has removed her bad conduct ; that he immediately appeared before the Town Kázi of Trichinopoly, and made a written declaration before him that he had divorced 1st plaintiff, and got that declaration to be sent to her by the said Kázi on the 8th January 1862 through the Kázi of the town of Tinnevelly, and that 1st plaintiff is not, therefore, entitled to maintenance.

"Unchastity does not appear to be a ground for divorce in Muhammadan law. The law authorizes a husband to divorce his wife without any misbehaviour on her part, and without assigning any cause, but it says to render a divorce complete, "it must be repeated three times, and between each time the period of one month must have intervened, and in the interval he may take her back either in an expressed or implied manner" (Macnaghten's Muhammadan Law, 3rd edition, page 60).

"Here the statement of the defendant and the evidence of his 3rd, 4th and 5th witnesses go to show that defendant

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made a written declaration in the shape of a letter addressed to 1st plaintiff, that he had divorced her and repeated the divorce three times *successively* before the Town Kázi of Trichinopoly, and got the letter to be sent to 1st plaintiff, who was residing at Tinnevelly, through the Kázi of that town, on the 8th January 1862. There is no evidence that 1st plaintiff received the letter, or that the contents thereof were communicated to her in any way. The only witness who was cited by defendant to prove this point is his 6th witness, the Tinnevelly Town Kázi, and he affirms that he did not deliver the letter to 1st plaintiff, but he did so to her sister's husband, her 3rd witness, and this witness denies having received any such communication; but granting that the declaration above alluded to must have reached the ears of the 1st plaintiff, and that it should count for one of the three repetitions of divorce required by law, it remains to see whether three have been two subsequent repetitions, as alleged by defendant in one of the grounds of appeal, to render the divorce in question valid. Defendants contends that the expression of the divorce in the written statement that the expression of the divorce in the written statement put in by him in this case is equivalent to the second repetition, and the expression of the same thing over again in his petition to the Lower Court, dated 5th August 1868, has answered for the third repetition ; but I do not think that the expression of the first declaration of divorce, how often it may have been made in this suit, in which the divorce itself is contested, would amount to anything of the kind.

Under these circumstances, I find that no divorce has as yet taken place, and that first plaintiff is entitled to maintenance."

The defendant preferred a Special Appeal on the ground that the divorce was a valid divorce under the Muhammadan Law.

Scharlieb, for the special appellant, the defendant.

Sanjiva Rau, for the 1st special respondent, the 1st plaintiff.

The Court delivered the following

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JUDGMENT :—It seems clear upon the authorities that there was a valid divorce. The compressing the expression of the intention into one sentence seems on the authorities, not to affect the legality of the repudiation, although some doctors consider the process immoral (Baillie, 207). In the present case, every presumption exists in favor of the regularity from the transaction taking place before the qualified doctor of the Muhammadan law. We must reverse the decree of the Lower Courts. There will be no costs throughout.

ORIGINAL JURISDICTION. (a)

Original Suit No. 68 *of* 1867.

H. H. ÁZIM UNNISSA BEGUM

against

CLEMENT DALE, ESQ., Receiver of the Carnatic Property.

Plaintiff, the Nicka wife of the late Nawab of the Carnatic, sued for a declaration of her absolute title to certain premises (Nos. 1,2,3 and 4); for possession of certain other premises (Nos 5 & 6); for delivery to her by defendant of the title deeds of all the premises except No. 1; and for cancellation and delivery up of a Sheriff's Bill of Sale of No. 1 in favor of T A,; of a mortgage of Nos. 2, 5 & 6 to R. & Co.; of a mortgage of No. 4 to A. A; and of all assignments by T. A, R & Co., or A. A to defendant She claimed this relief under an alleged gift to her by the late Nawab on or about the 6th January 1851. Defendant said (and it was so found) as to Nos. 2, 5 and 6,—that he had never had anything to do with the said premises or with the title-deeds thereof. As to the other premises, that the several assignments in his possession were made to him as Receiver of the Carnatic property, under Act XXX of 1858, but that he had not obtained possession of the said premises nor of any of the title deeds thereof, except the Sheriff's Bill of sale of the 29th November 1855 Issues were settled raising the following questions :—Whether the gift was made as alleged? Whether, if so, it was valid against creditors of, or subsequent purchasers for valuable consideration from, the donor? Whether the gift was revocable—and revoked? Whether defendant has, or ever had, possession of all or any of the title deeds of Nos. 2, 5 and 6? And lastly, Whether plaintiff's claim was either wholly or in part barred by Act XIV of 1859? *Held*, that a complete gift had been made and not revoked. That it was valid against the creditors of the donor and also (as the donor and donee were both Muhammadans) against subsequent purchasers for valuable consideration from the donor. But that defendant had never had possession of the title deeds of Nos 2, 5 & 6, so that the suit could not be maintained as regards them; and that it was barred, as to Nos. 1, 3 and 4, by Sec. 1, Cl. 16 of Act XIV of 1859.

Under Muhammadan Law "in the instance of a wife who may give a house to her husband the gift will be good, although she continue to occupy it along with her husband and keep all her property therein, be-

(a) Present : Bittleston, J.