

Ali Mahomed Eid Vs. Fatima Mahomed Ebrahim

Ali Mahomed Eid Vs. Fatima Mahomed Ebrahim

SooperKanoon Citation : sooperkanoon.com/330134

Court : Mumbai

Decided On : Jan-28-1919

Reported in : AIR1919Bom37; (1919)21BOMLR713; 51Ind.Cas.968

Judge : Basil Scott, Kt., C.J. and ;Hayward, J.

Appeal No. : Civil Reference No. 11 of 1918

Appellant : Ali Mahomed Eid

Respondent : Fatima Mahomed Ebrahim

Judgement :

Basil Scott, C.J.

1. This is a claim by a divorced wife of a Mahomedan who has married again for the maintenance expenses of her minor daughter by the first husband. The Courts at Aden have awarded the sum of Rs. 20 a month calculated according to the cost of living at Aden for maintenance for a period from the 20th April 1913 to the 20th October 1917. The latter date is the date up to which the plaintiff continued to have custody of her daughter. The earlier date is the date upon which the defendant's mother-in-law died who had under an agreement with the defendant undertaken to support the daughter. Between the two dates covered by the Court's decree the only custodian of the child was her natural mother. It is laid down in Emperor v. Ayshabai (1004)6 Bom. L.R. 536 that 'according to the Mahomedan Law a mother is entitled to the custody of her children even where she has been divorced by her

husband, but that does not relieve the father from the obligation of maintaining the children. The law intends that the mother ought to have the custody of the girls until they reach the age of puberty because till then they require her nurture and care: the law does not impose upon the mother the obligation of maintaining the children because she keeps them in her custody as she is entitled to do.'

2. The only question raised on behalf of the defendant, apart from the question of the monthly quantum of maintenance a matter upon which we cannot differ from the Aden Court, is the question whether maintenance is payable for the whole time covered by the decree, or whether it must be limited according to the provisions of Article 61 of the Limitation Act. That Article provides a limitation where the suit is for money payable to the plaintiff for money paid for the defendant. We are of opinion that the payments claimed by the plaintiff fall within the scope of that Article. It has been held in England that where a person paid the funeral expenses of his deceased daughter during her husband's absence, the husband was liable upon a count for money paid by the plaintiff for the defendant: see *Jenkins v. Tucker* (1788) 1 H. B 91 and *Ambrose v. Kerrison* (1851) 10 G.B. 776. As the Article provides that the suit must be brought within the three years from the date when the money is paid, the plaintiff is not entitled to recover any payments made prior to three years before suit. The suit was filed on the 15th November 1917, and the plaintiff is entitled to recover Rs. 20 a month for three years prior to the date of the suit. Under Section 13 of the Aden Act, the costs will be costs in the suit.