

A. Mouna Vs. J.E. Mouna

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Court : Mumbai

Decided On : Jul-23-1912

Reported in : (1912)14BOMLR872; 17Ind.Cas.215

Judge : Chandavarkar and ;Batchelor, JJ.

Appeal No. : Civil Reference No. 1 of 1912

Appellant : A. Mouna

Respondent : J.E. Mouna

Judgement :

Chandavarkar, J.

1. We are indebted to each of the learned pleaders, Mr. Ratanlal and Mr. N. K. Mehta, for having assisted us with his arguments as amicus curiae in this reference. The question is whether the Resident at Aden has jurisdiction to try and pass decrees in cases of divorce under the Indian Divorce Act (IV of 1869). Section 3 of the Aden Act (Bom. Act II of 1864), which is an Act to provide for the administration of civil and criminal justice at Aden, enacts that the Resident may hear and determine, in the first instance, all cases instituted in his Court, of whatever nature and whatever may be the amount or value of the property in dispute.

2. The Resident in making this reference has expressed his opinion that under this section his Court has jurisdiction to try suits under the Indian Divorce Act. But that interpretation of the section gives it a wider effect than could have been intended by the Legislature. The section in substance means that the Resident has jurisdiction to try suits only where he has jurisdiction given to him by law. For instance, if the words ' all cases instituted in the Court of Resident ' were construed to mean in their literal sense all suits instituted, without any regard to the question of the jurisdiction of the Resident determinable from extraneous considerations, a suit for property in Bombay might also fall within the jurisdiction of the Resident if instituted in his Court. That would reduce the section to an absurdity. Therefore the section in question must have a restricted meaning given to it and that is that the Resident has jurisdiction over any suit, where the jurisdiction is conferred upon him by any law relating to that suit.

3. Now, suits under the Indian Divorce Act are triable under a special law. Section 3 of the Indian Divorce Act provides that suits instituted under it shall be tried by the District Judge. ' District Judge' is defined to mean, in the non-regulation provinces, other than Sindh and Burma, a Commissioner of a Division. Aden is a non-regulation province, and therefore, a suit instituted under this Act (IV of 1869), can be tried only by a Commissioner of a Division, if such an authority exists there. But from information supplied to us by Government it appears that there is no officer there with that designation. It may be that the Legislature was not aware of the requirements of the Courts in Aden when it enacted Act IV of 1869. The omission of the Resident from the Indian Divorce Act may be due purely to inadvertence on the part of the Legislature. We must hold it is a casus omissus, the rule as to which is that the particular case thus left unprovided for can in no case be supplied by a Court of law, for that would be to make laws. Our decision cannot lead to any practical difficulty because Government can appoint the Resident Commissioner of a Division so as to give him jurisdiction to try suits under the Indian Divorce Act. On these grounds we must hold that the Resident at Aden has no jurisdiction to try this suit, and therefore, with this answer the reference must be returned to him.

Batchelor, J.

4. I am of the same opinion. It seems to me no answer to our view to contend that the Resident at Aden is a Commissioner for the purposes of revenue or for any other purposes whatever. He may be a Commissioner in many senses, but he is not a 'Commissioner of a Division,' and under the Indian Divorce Act only a 'Commissioner of a Division' is given in non-regulation provinces, such as Aden, jurisdiction to entertain a suit for divorce.

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