

Muhammad YamIn Vs. Razia Begam

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Court : Allahabad

Decided On : Nov-03-1919

Reported in : AIR1919All11; (1920)ILR42All134; 54Ind.Cas.223

Judge : Piggott and ;Dalal, JJ.

Appellant : Muhammad Yamin

Respondent : Razia Begam

Judgement :

Piggott and Dalal, JJ.

1. The litigation out of which the application before us arises related to the position of Muhammad Yamin, the appellant in this Court, as the husband of Musammat Razia Begam. He sued for restitution of conjugal rights and for a declaration of his legal status as the woman's husband. There was a cross-suit based upon an allegation by the woman that she had ceased to be the wife of Muhammad Yamin, if she ever was, by reason of the fact that she had exercised against him the option of puberty given by the Muhammadan Law. Appeals are now pending against the decision of the court below, which was in favour of the lady's contention. In this application the prayer is that the defendants be prohibited from giving away Musammat Razia Begam in marriage to any one, before the disposal of the aforesaid appeals. As it stands the prayer in the application must be understood to refer to the defendants other than the lady herself, who are relatives

of hers. It is obvious that such an application could not by any stretch of language be brought within the purview of Rule 1 of Order XXXIX of the Code of Civil Procedure. It is not so clear that an application of this nature might not, under certain circumstances, be taken cognizance of by a court of Justice as falling under Rule 2 of the same order. In the present case there was a relief by way of injunction sought in Muhammad Yamin's suit, that is to say, he asked for an injunction against the defendants other than Razia Begam to the effect that they should not place any hindrance in the way of the lady's return to his house. It is contended that this was a suit for restraining these defendants from committing, or at any rate, assisting in the commission of, a breach of the contract of marriage between the parties, or in the alternative for restraining them from committing an injury against the marital rights of the petitioner. From this the argument is advanced that the present petition is merely one for a temporary injunction to restrain certain defendants from committing a breach of contract, or injury of a [like kind, arising out of the same contract, or relating to the same marital rights. Under the circumstances of the case we think it would be doing some violence to the language of the rule to bring this application within its scope. We note, moreover, that according to its terms, the application seeks no remedy against Musammam Razia Begam herself. She is now, under the religious law governing the parties, of an age to enter into a contract of marriage on her own account and an injunction directed against the remaining defendants would be meaningless if it were not accompanied by some injunction addressed to the lady herself. It has been suggested that we might allow the application to be amended; but the fact remains that, from the petitioner's point of view, and accepting for the purpose of argument his contention that the lady is still in the eye of the law his wife, any such injunction addressed to the lady as the appellant now suggests would amount virtually to an injunction not to commit adultery. Under the circumstances of the case we do not think that this Court ought to interfere in the manner suggested, and we dismiss the application with costs.