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Court : Allahabad

Decided On : Apr-19-1939

Reported in : AIR1939All592

Appellant : Asmat Ullah and ors.

Respondent : Mt. Khatun-unnisa and ors.

Judgement :

Thom, C.J.

1. This is a defendants' appeal arising out of a suit for possession of property. The plaintiff is one Mt. Khatununnisa and she claims the property as the heir of her deceased husband. As his heir she is entitled to one-eighth of the property. She alleges that she has been in possession of the whole property in dispute in lieu of dower which she averred was Rs. 3000. The defence was that the plaintiff had been divorced by her deceased husband during his lifetime and she was not entitled to anything in lieu of dower or to any share in her deceased husband's estate. The learned Civil Judge in the lower Appellate Court upon a consideration of the evidence has held that the defendants had failed to prove that the plaintiff's husband had divorced her. He has held further that the dower was not Rs. 3000 but Rs. 35-4-0 and that this amount had been paid. He held finally that the plaintiff was not in possession of the property in dispute in lieu of dower. He accordingly granted decree for joint possession.

2. The main question for consideration in this appeal is as to whether, in fact, the plaintiff was divorced by her husband as id alleged by the defendants. The learned Civil Judge in the lower Appellate Court observes in the course of his judgment upon this question that 'there is absolutely no evidence on the record to prove that the plaintiff's husband ever pronounced divorce on oath.' It is not in dispute however that some 15 years before his death in 1930 the plaintiff had instituted criminal proceedings against her husband in which she claimed maintenance. In his written statement in the course of these proceedings the husband stated that three or four months before the date upon which he filed this statement he had divorced his wife according to Mahomedan law. It further appears that the husband made a statement on oath on 12th January 1915 in the course of which he deposed that he had divorced his wife by repeating thrice 'I divorce you.'

3. It was contended for the defendants that it must be held in these circumstances that the plaintiff's deceased husband Abdul Samad had, in fact, divorced his wife on the date upon which he made the aforementioned statement. In support of this contention learned Counsel referred to Macnaghten's Principles and Precedents of Mahomedan Law, 1890 Edition, at p. 296. The learned author there refers to 'Case 42.' In this case it was decided that where a husband states that he has divorced his wife and the wife denies that she has been divorced, the divorce should be held to take effect from the date upon which the statement was made. Learned Counsel for the defendants further referred to Syed Ameer Ali's Mahomedan Law, Edn. 5, page 479. The learned author dealing with the 'Capacity for Talak' observes:

According to the Hanafi doctrines, although an acknowledgment of a talak, namely an acknowledgment by a man that he had divorced his wife, extracted from him under compulsion, is ineffective; a talak actually pronounced under compulsion is valid....

Whilst an acknowledgment extracted from the husband by compulsion whether embodied in writing or not is ineffective, an acknowledgment of talak made in jest or falsely will take effect 'judicially' though it will not have any force in foro conscientiae....

4. One may reasonably infer from the passage above quoted that if an acknowledgment of talak is made by the husband the divorce will be held to take effect at least from the date upon which the acknowledgment is made. Learned Counsel for the plaintiff was unable to refer us to any authority to the contrary. We are constrained, in the circumstances, to hold that the evidence upon the record establishes that the plaintiff was divorced by her husband in the year 1915. This finding concludes the case against the plaintiff. In the result the appeal is allowed, the order of the learned Civil Judge is set aside and the suit is dismissed. Parties will bear their own costs. The cross-objection is dismissed.

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