

Howard Vs. Howard

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Court : Allahabad

Decided On : Jun-06-1922

Reported in : 69Ind.Cas.509

Judge : Grimwood Mears, C.J., ;Walsh and ;Kanhaiya Lal, JJ.

Appellant : Howard

Respondent : Howard

Judgement :

1. On the 24th of August 1921, Mr. Sheering, sitting as District Judge at Lucknow, granted a decree nisi to William Fitzroy Howard. The petition set out the marriage, the cohabitation of the parties, and the birth of a child, and the subsequent death of that child, and then alleged that on the 4th August 1917, and on other days between that and December 1920, the wife committed adultery with Thomas Dennet, the co-respondent, 'with whom she is living now and has an illegitimate child by him.' There does not appear to be on the record any answer by the respondent or co respondent. The next document we have after the register of marriage is case which is headed, 'In the Court of the District Judge' The suit is described as 'Regular Suit; No. 4 of 1921' and sets out the names of the parties and then states: 'Petitioner, the respondent and the co-respondent are present,' Then it immediately begins by saying that 'Doris May Howard, the respondent, states that she was married to the petitioner on the 24th of April 1916, at the Roman Catholic Church, Lucknow. Then she admits that she gave birth to a

female child on July 3rd 1920, and that the petitioner is not the father. She denies ever having had connection with the be respondent. Thomas George Dennet denies ever having had connection with the respondent since her marriage with the petitioner. Mr. Ali Ausat states that he does not wish to take action as regards the co-respondent and claims no damages against him. The co-respondent admits that he lives in Lucknow,' That is apparently the whole of what Mr. Sherring thought to be evidence in the case. On the contrary, not a word of it is in evidence, In, all divorce cases the petitioner must come into the witness-box, petitioner must be sworn and he must prove his case, be cause, amongst other things, the Judge has to satisfy himself whether there is any collusion between the parties, and he has further to satisfy himself as to the complete honesty and truth of the petition. Here the petitioner does not appear to have gone into the witness-box. The respondent does not appear to have been put on oath nor does the co respondent, and in this state of circumstances, Mr. Sherring thought that he was entitled to grant the petitioner a decree. We are of opinion that the decree nisi must be set aside and, having regard to the admission of Mr. Ali Ausat, the petitioner may find himself in a difficulty in regard to the institution of another suit, because if he now commences fresh proceedings and makes Mr. Dannet co-respondent, some question will necessarily arise as to what happened when, on the 24th of August 1921, Mr. Ali Ausat was content that the co-respondent should be dismissed from the suit and that the decree nisi should be passed upon the basis that the child born on the 3rd of July 1920, was the child of some unknown man. In the circumstances, Mr. Howard is at liberty, if he is so minded, to file a fresh petition, but he must insert in that petition a statement of the institution of this suit and its result that is in accordance with the divorce practice as it prevails in England, and if he proposes to proceed on the basis of his wife's adultery with a man unknown, he must obtain leave from the Court to dispense with the making of a so respondent. At the same time, we think it right to point out that this case, both as regards the materials in the petition and as regards the statements of the parties, leaves us in some doubt as to the good faith of the parties, and it is very necessary, if there is another attempt of Mr, Howard to obtain a decree nisi, that he should put the whole of his case in the greatest fullness in detail before the Court, The decree nisi is, therefore, set aside. We direct that a copy of this

judgment be sent to Mr. Sherring personally by registered post.

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