

In Re: Gunput Narain Singh

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Court : Kolkata

Decided On : Jul-05-1875

Reported in : (1876)ILR1Cal74

Judge : Glover and ;Romesh Chunder Mitter, JJ.

Appellant : In Re: Gunput Narain Singh

Judgement :

Glover, J.

1. Against this order the petitioner has appealed, and in support of his contention Baboo Kalimohun Doss has drawn our attention to certain texts of Hindu law as set out in Menu, to show that betrothal is really a marriage, and that a girl once promised to a particular man could not be given in marriage to another; we have also been referred to 1 Strange's Hindu Law, Macnaghten's Hindu Law, and Colebrooke's Digest.

2. The right of the petitioner to have an injunction pendente lite depends on the nature of the remedy which a Civil Court would give in the suit, and if it could be shown that a decree for specific performance would necessarily follow proof of the petitioner's betrothal to the girl, an injunction might properly be granted, as without it the suit might, and very probably would, be infructuous.

3. But I agree with the Subordinate Judge that Section 93, Civil Procedure Code, was never meant to apply to cases like this. As a general rule, a decree for specific performance of a contract is given only where an award of damages would be an incomplete relief, and the breach of promise to marry or to give in marriage is one to which a money penalty has in England at least In *Jogeswar Chakrabati v. Panch Kauri Chakrabati* 5 B.L.R. 395 it was held that, on breach of a promise to give in marriage, a suit to recover a sum paid as consideration would lie in the Civil Courts; but see per Maekby, J., in *Asgar Ali Choivdhry v. Mahabat Ali* 13 B.L.R. App. 34 where the remedy for breach of a contract to give in marriage is discussed) always been considered adequate. And if the matter is to be settled on the principles of equity and good conscience, it can hardly, I think, be said that the Courts in this country should interfere to enforce a marriage between parties one of whom is unwilling, whilst the other can obtain a money remedy for his disappointment. The authorities which have been quoted in support of the arguments that Hindu law demands the carrying out of a marriage when certain anterior ceremonies have been performed, do not, it seems to me, go farther than to declare it usually wrong to break such engagements.

4. I have not been able to discover any case like this decided on this side of India See a reference to the point in *Nowbat Singh v. Mussamat Sad Kooer* 5 N.W.P. H.C. Rep. 102 but the question was very fully discussed in the Bombay High Court in the case of *Umed Kika v. Nagandas Narotamdas* 7 Bom. H.C.R. O.C. 122. and it was there decided that the Court would not order specific performance (the girl not being a party to the suit), or compel the father to carry out a marriage with the person to whom the daughter had been betrothed. The Court also held that a betrothal was not, according to Hindu law, an actual and complete marriage. It was shown in that case that there was no precedent for the contention that specific performance had ever been decreed in cases like the present. The authorities quoted (five cases in all), not going beyond this, that, in case the promise was not carried into effect within a certain limited period, the defendant should pay a certain sum by way of damages.

5. I quite agree with what the learned Judges of the Bombay High Court say on this point, and the absence of any authority in favour of the petitioner points

strongly to the conclusion that such a case as this has never been considered one in which anything more than a money award of damages should be decreed.

6. The case of *Aunjona Dasi v. Prahlad Chandra Ghose* 6 B.L.R. 243 does not seem to apply. In that suit it was held that a suit by a Hindu mother to declare the marriage of her daughter with the defendant was null and void would lie in the Civil Court. I was of a contrary opinion at the time; but granting that such a suit will lie, how does that affect the present case? It is not averred by the petitioner that his marriage was ever actually completed.

7. With regard to the effect of betrothal, the reference made to the *Vyavastha Darpana* applies to Bengal only; but even there, according to the authorities quoted in *Vyavastha* 386 (p. 646), betrothment is not considered marriage irrevocable; for, as a matter of fact, a girl betrothed to a man, who dies before actual and complete marriage, can afterwards be married to another man, and this seems a complete answer to the allegation.

8. The judgment of the Bombay High Court refers to the *Mitakshara*, and that is the law which applies to the case before us. By that law, ch. ii, Section 11, v. 27, retractation of betrothal is punishable by a fine to the king, and may in some cases be made without any penalty, provided good cause be shown, and one, if not the only, good cause, is said to be the coming of a preferable suitor.'

9. It appears to me, therefore, that as the plaintiff would fail in a suit for specific performance of the marriage (I do not wish to prejudge matters, but that is my opinion), he ought not to obtain an injunction to prevent the girl's guardian making other matrimonial arrangements. I think that the Subordinate Judge was right, and that this application should be refused.

Mitter, J.

10. Without expressing any opinion upon the question, whether a suit of this nature will lie or not, I also think that this application ought to be refused. I reject it upon the grounds that the matter does not come within the purview of either Section 92 or Section 93 of Act 'VIII of 1859; and, if it did, the petitioner should not

be allowed to question the order of the lower Court in this form when he has under the law the right to appeal in a regular way.

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