

Thomson Vs. Thomson and anr.

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Court : Kolkata

Decided On : Jul-21-1887

Reported in : (1887)ILR14Cal580

Judge : Trevelyan, J.

Appellant : Thomson

Respondent : Thomson and anr.

Judgement :

ORDER

Trevelyan, J.

1. This is an application calling on the petitioner to show cause why he should not deposit the probable amount of costs to be incurred by the respondent in the suit brought against her by him. The parties were married before the Succession Act, and are of an Anglo Indian domicile. I think I must follow the rule formerly in force in England and require him to deposit the necessary costs. To this rule there are two main exceptions: (a) cases such as Proby v. Proby 5 C. 357, and (b) where the wife has separate property sufficient for her support and for the costs of suit. The husband must, however, satisfy me that the wife has sufficient separate property for those purposes, but there is nothing in his affidavit to show what the means of the respondent are. I am not satisfied with Mr. Pugh's argument that the considerations arising in Walker v. Walker 1 Curt. 560 do not arise at this stage;

the husband there appears to have been a man of absolutely no means, but here the petitioner's affidavit does not show that he is a man of no means. I think I must make the ordinary order, and direct that it be referred to the Registrar to estimate and certify the probable amount of the costs of suit of the respondent up to and including the final hearing and decree and that the petitioner do pay the amount so to be certified to the credit of the suit. Costs of this application to be costs in the cause.

2. In accordance with this order the Registrar certified that the probable amount of such costs would amount to Rs. 1,732. The amount certified was not paid into Court, and the respondent, on the 21st July 1887, applied to the Court on notice for an order that the proceedings on the petition be suspended until the costs certified by the Registrar be first paid.

3. Mr. Pugh for the applicant cited *Keane v. Keane* L.R. 3 C.P. & D. 52.

4. The petitioner appeared in person, and read an affidavit, in which he swore that he was unable to find the sum required, he being in receipt of Rs. 150 per month only ; that he believed that the application was made merely for the purpose of preventing the suit being brought to a hearing; that he had already borrowed money to support himself and his four children and for the marriage expenses of another of his daughters, who had been married at the beginning of 1887.

5. This is an application by a wife, respondent in a suit for dissolution of marriage, to stay proceedings in the suit until the costs estimated by the Registrar to be the costs she will probably incur in the suit are paid. Mr. Pugh for the respondent contended that I am bound by *Keane v. Keane* L.R. 3 C.P.D. 52 to make the order. I cannot find any case in which an order of this kind has been made against a husband who is possessed of no means. It would be unreasonable to stay proceedings because a person of no means has not deposited what he has not got. The whole question is, has the petitioner the means wherewith to pay his wife's costs; he himself says in his affidavit he is not able to deposit all the money required ; the wife on the other hand says that he is able to do so. The affidavits therefore do not dispose of the matter, so the only course left is to refer it to Mr. Fink to enquire what the petitioner is possessed of. Costs to be costs in the cause.

If, however, the respondent should be advised to waive the enquiry, the application will be dismissed, and the costs thereof will be costs in the cause.

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