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Court : Kolkata

Decided On : Feb-13-1931

Reported in : AIR1932Cal161

Appellant : Mrs. Stroud

Respondent : Mr. Stroud

Judgement :

Buckland, J.

1. This is a wife's petition for dissolution of marriage on the ground of her husband's adultery, filed under the Indian and Colonial Divorce Jurisdiction Act.
2. A doubt as to the husband's domicile arose in my mind and I adjourned the hearing in order that if possible further evidence might be adduced.
3. I have observed that the question of domicile in those cases does not always receive the attention so important a matter demands. A similar observation was made in Wright v. Wright : AIR1931 Cal383 which was a case of the confirmation of a decree of dissolution of marriage made under the Indian Divorce Act by a District Court. That, was the converse case and there were circumstances suggesting that in fact the parties were domiciled in England, in which case the Judge would have had no jurisdiction. I then had occasion to discuss the principles applicable and the matters to be considered in determining the domicile of the

parties.

4. The question of domicile is important, because, under Section 2, Divorce Act no decree of dissolution of marriage may be made under that statute, if the parties are not domiciled in India at the time when the petition is presented. The Indian and Colonial Divorce Jurisdiction Act, on the other hand, confers jurisdiction to make such a decree, where the parties are British subjects domiciled in England or Scotland, and, as no person can have two domiciles, it follows that any decree for the dissolution of a marriage must be made under one or the, other Act. This goes to the root of the jurisdiction and the position bears no analogy whatever to cases where it is doubtful under which particular statute or branch of the law an order should be made, but the Court has jurisdiction under both. I need express no opinion whether, where a petition has been filed under one statute and, at the hearing, it appears that, by reason of the domicile of the parties, it should have been filed under the other, it would be open to the Court, assuming that there were no other; obstacle in the way, to treat the petition as though it were filed under the statute; applicable and make a decree, for no such point has arisen and I have not had occasion to examine it. But even if such a; course were permissible, it could not be followed on a wife's petition for dissolution of marriage filed under the Indian and Colonial Divorce Jurisdiction Act on the ground of adultery alone, for under the Indian Divorce Act, adultery alone is not a ground for dissolving a marriage on a wife's petition. The importance of considering the question of domicile from the outset, as fully as circumstances permit and with care, cannot be sufficiently emphasized.

5. In this particular case, when it first came on, the petitioner stated that the respondent had told her that his father was born at Gravesend. She also said that he had been in the Customs Service and had retired prior to 1923, when she married, and was still living in Calcutta. It now appears from the evidence of the petitioner's father-in-law that his father was born at Reading and was in the British Army, and the witness was born in India but was educated in England and remained there until he was 19 years old, when he came to India and took service under some railway company, which service he subsequently left and was appointed to the Customs Department. It is not unreasonable to infer that the

witness' father was of British domicile; the circumstance that he died in India of cholera does not affect it, and, that being so, the petitioner's father-in-law's domicile of origin was British. The circumstance that he has never returned to England, but, ever since he was 19 years of age, has resided continuously in India, does not effect a change of domicile so long as he has had an animus revertendi. He says that, though he retired from his service in 1916 and has since been living in India on his pension, it is his intention to return to England and not to come back to India. His domicile therefore is British and the respondent's domicile of origin is the same, and there is no suggestion that the respondent has changed his domicile.

6. Having regard to what the witness called today has said, I am satisfied that the respondent's domicile is British and, as a wife acquires the domicile of her husband, the petitioner is entitled to present this petition under the Indian and Colonial Divorce Jurisdiction Act. (Rest of the judgment is not material for purposes of report.)

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