

Sabed Khan Vs. Bilatunnessa Bibi, Wife of Sabed Khan

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Court : Kolkata

Decided On : May-13-1919

Reported in : 52Ind.Cas.322

Judge : Newbould and ;Duval, JJ.

Appellant : Sabed Khan

Respondent : Bilatunnessa Bibi, Wife of Sabed Khan

Judgement :

1. This appeal arises out of a suit between Muhammadans for restitution of conjugal rights. The plaintiff is the husband and has been granted a decree for restitution of conjugal rights by both the Courts below. But while the Munsif directed the defendant, the wife, to go to her husband's house, the lower Appellate Court declared that the conjugal rights must be exercised at the bari of the wife's parents. It appears that after the marriage of the parties the husband executed a kabinnama. The decision of the lower Appellate Court is based on the terms of Clauses 4 and 5 of this deed. The wife was given the right to leave her husband's house and to live elsewhere on two contingencies. The first contingency was ill-treatment by the husband or by any other inmate of his house. The second contingency was any sort of difference or disagreement with the husband or his family members. It has been found that there was ill-treatment and on this finding it has been held that the husband was entitled to restitution of conjugal rights only if he allowed his wife to live with her parents. On behalf of the appellant, it is

contended that such a clause in the kabinnama must be held to be invalid because it is contrary to the principles of Muhammadan Law. Reference has been made to Wilson's Anglo Muhammadan Law, 3rd Edition, paragraph 56, in which it is stated: 'The condition that the wife shall, though adult, be at liberty to live in the house. of her parents is void and the husband is entitled, notwithstanding it, to insist on the wife residing with him in his own house, provided he has paid the dower or a prompt portion of it.' Reference has also been made to the case of Abdul Piroj-khan v. Huassenbi 6 Bom. L.R. 728. and the case of Meherally Mooraj v. Sakerkhanoobai 7 Bom. L.R. 602. in support of this proposition. But here it is not suggested that the wife will be entitled to leave her husband's house without a cause. Such a condition would undoubtedly be opposed to the Muhammadan Law. But there is nothing in any of these authorities to show that the condition that the wife may leave her husband's house on ill-treatment is opposed to these principles. Reference was also made to the leading case of Moonshee Buzloor Ruheem v. Shum-shoonnisa Begum 11 M.I.A. 551: 8 W.R.(P.C.) 3 : 2 S.A.R. P.C.J. 259 :2 Suth. P.C.J. 59 : 20 E.R. 208 and it was argued that before the wife could resist the suit for restitution of conjugal rights on the ground of cruelty, she must prove such cruelty as would endanger her life, or at any rate cruelty, of a more severe character than has been found by the learned Subordinate Judge in the present case. But in this case the defence is based not on cruelty itself but on ill-treatment as a breach of a condition of the kabinnama, which entitled her to leave her husband's house and permitted her to go to her parents. It is also contended that this agreement was void as not having been entered into at the time of marriage. But in neither of the lower Courts was such a point taken It appears that there is evidence, and that the deed itself recites that though executed sometime after the marriage; it contains the conditions which were entered into at the time of marriage. We, therefore, hold on the findings' of the lower Appellate Court that this agreement is not bad by reason of its having been an agreement subsequent to the marriage. We can see nothing in Muhammadan Law opposed to an agreement such as this, which does not allow the wife to deny her husband's conjugal rights but permits her, when ill-treated, to leave her husband's house and to insist on those rights being exercised in her parents' residence.

2. The appeal fails and is dismissal with costs.

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