

M.M. Robey Vs. A.V. Robey

M.M. Robey Vs. A.V. Robey

SooperKanoon Citation : sooperkanoon.com/874159

Court : Kolkata

Decided On : Aug-07-1929

Reported in : AIR1931Cal121

Appellant : M.M. Robey

Respondent : A.V. Robey

Judgement :

Panckridge, J.

1. This is an application on the part of the petitioner for alimony pendente lite. The application was in the list yesterday and Mr. Westmacott for the respondent than informed me that he intended to take the point that this Court had no jurisdiction to entertain the petition which is one for dissolution of marriage on account of cruelty and adultery, and with the consent of the petitioner the case was set down to-day for trial of the issue whether the Court has jurisdiction in view of the circumstances of the case.

2. Under the Divorce Act the High-Court is defined in the case of any petition presented under the Act as that High Court within the local limits of whose ordinary appellate jurisdiction or whose jurisdiction under the Act the husband and wife reside or last resided together. It is conceded that the parties last resided together in Delhi. It appear from the judgment of Marten, J., in Borgonna v. Borgonna [1920] 44 Bom. 924 that the word 'together' in the definition which I have read only

qualifies the words 'last resided' and not the word 'reside,' Therefore I have to decide whether on the evidence both parties were residing within the local limits above specified on 2nd August 1929 when the petition for dissolution was presented. With regard to the petitioner were it important to decide the point I am not all sure that I should be satisfied that she resides within the jurisdiction in the sense required by the Divorce Act. It appears that the husband and wife parted on 8th April 1929 and she thereafter went for a week to live with her sister at Tundla, at the expiration of which time she lived with certain Mrs. King at Howrah which is within the local jurisdiction, Since 15th June she has been living at an address in Calcutta. She says she came here to look for work. Whether she obtained any work or what her future intentions are I do not know: but I will assume that she is now residing within the jurisdiction. When we come to the respondent's case I cannot imagine less substantial grounds than those upon which I have been asked to hold that he resides within the jurisdiction. He is a tenant of a house at 40 Asoke Road in Delhi where he has lived ever since his marriage from 1926. Prior to that he was living in Delhi and he had been employed on certain electrical work in connexion with Viceregal Lodge in Delhi since 1922. He is employed by the Public Works Department and although he is not a gazetted officer he is liable to be [transferred if the Department wishes it. The reason he came to Calcutta is that he desired to initiate criminal proceedings against a certain person on a charge of committing adultery with the petitioner. In connexion with those proceedings he came to Calcutta on 27th June and took the first step in the proceedings on 29th and then left for Delhi, and he returned to Calcutta when proceedings were resumed and he was intending to leave about 1st August when the Magistrate's Court pronounced the judgment in the criminal proceedings. I should add that whenever he wishes to leave Delhi he has to obtain leave from the Department. During his stay in Calcutta he has been living with a brother in Kidderpore who is employed by one of the Railways in their offices here and who is liable to be transferred if his employers see fit to order it. I can hardly imagine a case where the presence of a respondent in the jurisdiction is so obviously of a temporary nature. That being so, I find as a fact that the respondent in this case does not reside within the jurisdiction within the meaning of Section 3, Divorce Act and I therefore dismiss this application for alimony. With regard to the petition itself I

presume the petitioner will take such steps as she may be advised.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com