

Wright Vs. Wright

Wright Vs. Wright

SooperKanoon Citation : sooperkanoon.com/876220

Court : Kolkata

Decided On : Apr-07-1930

Reported in : AIR1931Cal383

Appellant : Wright

Respondent : Wright

Judgement :

Buckland, J.

1. This matter has come before this Court for confirmation, under Section 17, Divorce Act of 1869, of the decree for the dissolution of the marriage of the parties made by the District Judge at Darjeeling on 19th September 1929.
2. There would be no difficulty in the way of confirming the decree were it not for want of proper attention to the question of the domicile of the petitioner.
3. In his evidence, the petitioner has stated that his present domicile is in India. He has also stated that he was married at Secundorabad in 1920 and has lived with his wife at various places in India until shortly before he filed his petition, statements which may or may not have a bearing upon the question of his domicile. The District Judge has observed that he is satisfied of the fact that all the parties are at present domiciled in India. Nothing further material to the question of domicile is to be found on the record.

4. It is of the highest importance that in cases under the Divorce Act the question of domicile should be treated with care, for, unless the parties to the marriage are domiciled in India at the time when the petition is presented, there is no jurisdiction in a District Court under the Divorce Act to dissolve the marriage and, if a decree is made without jurisdiction, for that reason not only will it be of no effect, but, in some cases, the consequences may be very far-reaching and affect questions of succession wholly unanticipated at the time.

5. It would appear from this and other cases, which have come before this Court for confirmation that the subject of domicile is imperfectly understood and that it is desirable to give an explanation of the law on the subject.

6. The word 'domicile' has been found difficult of definition, but one definition is that a person's domicile is that country in which he either has or is deemed by law to have his permanent home. But, whereas a person may have no home, or more than one, the law requires him to have a domicile, and one only. Hence any definition of domicile, which would include all the cases in which domicile and home are not identical, must be either an enumeration or too vague to be practically useful. Residence alone, for however long a period, is by no means the test, and a safer guide is to enquire where the person, whose domicile is in question, intends to end his days. Every person receives at birth a domicile of origin, which in the case of a legitimate child born during his father's lifetime is the domicile of his father at the time of his birth. Every independent person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise. To these may be added the further propositions that the presumption of law is against a change of domicile, which must be proved by the person alleging it, and that a wife's domicile is the domicile of her husband.

7. Where a person is said to have changed his domicile the inquiry to be made was propounded by Lord Cairns in *Bell v. Kennedy* [1868] 1 H.L.S.C. 303 in the words:

Whether the person whose domicile was in question had 'determined' to make, and had in fact 'made,' the alleged domicile of choice his home, with the intention

of establishing himself and his family there and ending his days in that country.

8. In the same case, Lord Westbury pointed out that residence and domicile are two perfectly distinct things. Although residence may be some small prima facie proof of domicile, it is by no means to be inferred from the fact of residence that domicile results, even although you do not find the party had any other residence in existence or in contemplation: of *Winans v. Attorney-General* [1904] A.C. 287.

9. The question of domicile is a mixed question of fact and law. It is only when the relevant facts have been ascertained that the Court is in a position to determine where a person is domiciled. It would be impossible to state exhaustively the various matters which are material to the question, but, where a European claims to be domiciled in India, it will be pertinent to enquire where his father lived and died, or resides, as the case may be, where he and his father were born, the circumstances in which he came to and resides in India, which will assist in ascertaining whether there exists an *animus revertendi* or an *animus manendi*, his object in residing in India and generally as to the conditions under which he lives and his habits of life. .

10. There are no materials on the record in this case such as questions of the kind indicated would have elicited, and when a witness states that he is domiciled in this country, he is probably making a statement of which he is ignorant of the precise meaning or implications, while to hold on such a statement that the witness is domiciled in India is to state a conclusion in ignorance of the facts, upon which it should be founded.

11. The result is most unfortunate, as it causes delay and additional expense to the petitioner, while, if it should subsequently turn out that the District Court has no jurisdiction, which I must not be taken as suggesting is here the case, the whole of the money spent by the petitioner in prosecuting his petition will have been wasted, which, especially in an undefended suit, is deplorable.

12. The case will go back to the District Judge of Darjeeling to make further enquiry as to the domicile of the petitioner. He will take such additional evidence, including hearing additional witnesses, if any, as the petitioner may wish to adduce

or call, and, as required by Section 17 of the Act, certify the result of such enquiry and the 'additional evidence to this Court, to which he will at the same time forward the record of the case.

Rankin, C.J.

13. I agree.

C.C. Ghose, J.

14. I agree.

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