

Hasanali Mirja and ors. Vs. Nushratali Mirja and anr.

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SooperKanoon Citation : sooperkanoon.com/879761

Court : Kolkata

Decided On : Nov-14-1934

Reported in : AIR1935Cal572,157Ind.Cas.1091

Appellant : Hasanali Mirja and ors.

Respondent : Nushratali Mirja and anr.

Judgement :

R.C. Mitter, J.

1. Subject to the modification hereinafter indicated, this appeal must be dismissed. The suit was instituted by two plaintiffs who are the respondents before me for a declaration that plaintiff 1 is the legitimate son of one Syed Azmut Ali Mirza, a political pensioner, and plaintiff 2 is his wife. There were other prayers in the plaint but having regard to the provisions of the Pensions Act they have been refused to the plaintiffs by the lower appellate Court. The plaintiffs have not preferred any cross-objection and therefore it is unnecessary to consider the reliefs which they claimed and which have been rejected by the lower appellate Court. The plaintiffs' case is that Syed Azmut Ali Mirza married defendant 4 as his first wife and by her he left surviving him three issues, namely defendants 1 to 3, and that the said gentleman also married plaintiff 2 whose legitimate son is plaintiff 1. Syed Azmut Ali Mirza died sometime in October 1927 and the plaintiff 1 was born on 3rd December 1927.

2. The defence that has been set up is that plaintiff 2 is not the lawfully wedded wife of the said gentleman and plaintiff 1 is not his legitimate son. The Subordinate Judge on a consideration of a document, namely, Ex. 1, Kabinnama, has come to the conclusion that Aziz Saheb did marry plaintiff 2 in the muta form for a period of 3 or 5 years in December 1920. The Subordinate Judge then takes into consideration the evidence of Dr. Nag, who was the family physician of the late pensioner. He deposed that till his death in October 1927 Aziz Saheb treated plaintiff 2 as his wife. Taking into consideration these two pieces of evidence he has inferred that the marriage although muta in form must have been extended from time to time and was subsisting at the time of the death of Aziz Saheb. Under the law the term of muta marriage can be extended and I cannot see how it can be said that the Subordinate Judge has committed an error in law by inferring from the evidence and the circumstances which I noticed that plaintiff 2 continued as the muta wife of Syed Azmut Ali Mirza alias Aziz Saheb till his death and plaintiff 1 is his legitimate son.

3. I would accordingly dismiss the appeal, but so far as the ordering portion of the decree of the Court below is concerned it has to be modified. Plaintiff 1 is only entitled to a declaration that he is the legitimate son and heir of late Syed Azmut Ali Mirza alias Aziz Saheb. The rest of the declaration being beyond the plaintiff's prayer must be deleted. With regard to the declaration made in favour of plaintiff 2 that must stand. Subject to this modification, the appeal is dismissed with costs.