

Thomas Vs. Thomas

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SooperKanoon Citation : sooperkanoon.com/887196

Court : Kolkata

Decided On : Nov-17-1924

Reported in : (1925)ILR52Cal379

Judge : Sanderson, C.J., ;Newbould and ;Buckland, JJ.

Appellant : Thomas

Respondent : Thomas

Judgement :

Sanderson, C.J.

1. In this case we are of opinion that the matter must be remanded to the learned District Judge on the ground that in our opinion the judgment of the learned Judge is not sufficient.

2. In the first place there is nothing in the learned Judge's judgment to show that the case comes within the provisions of Section 2 of the Indian Divorce Act, 1869. That section provides that Nothing herein after contained shall authorise any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition. There is no finding as to the matters referred to therein. The section further provides or to make decrees of dissolution of marriage except in the following cases:---(a) where the marriage shall have been solemnized in India; or (6) where the adultery...complained of shall have been committed in India.

3. All that the learned Judge says in his judgment is as follows:---I am satisfied of the factum of adultery, and that the petitioner has in no way connived at or condoned it. The marriage is therefore declared to be dissolved.

4. This Court requires specific findings in respect of the material facts which it is necessary for the petitioner to prove in order to bring the case within Section 2 of the Divorce Act.

5. We have referred to this matter on several occasions; and it is sufficient for me to refer to the case of Singrai Santhal v. Puraigi Santhalini (1920) 31 C. L. J. 340.

6. In the second place it is not clear to this Court whether the learned Judge has proceeded upon the correct principle in assessing the damages at Rs. 20,000. The learned Judge said: Apart from any question of sentiment, the wrong inflicted upon him is one for which he deserves substantial compensation, and moreover it is more than likely that he will incur considerable expense in the matter of the disposal of the two children of the marriage.

7. For the purpose of stating the correct principle reference may be made to the charge to the jury of the learned President of the Probate Division in the case of Keyse v. Keyse and Maxwell (1886) L. R. 11 P. D. 100. which is as follows:

8. There is no doubt about the adultery, it has been proved and admitted; and the question therefore that remains for you to consider is what damages, if any, the co-respondent is to pay. Now I am obliged to explain the principle upon which damages are to be given; and, first, you must remember that you are not here to punish at all. Any observations directed to that end are improperly addressed to you. All that the law permits a jury to give is compensation for the loss which the husband has sustained. That is the only guide to the amount of damages to be given. But, undoubtedly, if it is proved that the man has led a happy life with his wife, that she has taken care of his children, that she has assisted in his business, and then some man appears upon the scene and seduces the wife away from her husband, then the jury will take those facts into consideration. But the question in this case, as in so many others' is, whether or not these losses have been cast upon the petitioner by the action of the co-respondent. If he did not seduce her

away from her husband, that makes a very material difference in considering the amount of damages to be given. In considering these questions undoubtedly the conduct of the husband must be looked to. Here the husband and wife had been leading an unhappy life before they parted, and he knew she had no means of living. It is for you to judge whether he had really made any effectual efforts to discover where she was---effectual' I mean, in the sense of being such as a man would really take if he had his heart in the inquiry. If you come to the conclusion that he did not make any earnest inquiry after her, that is a fact you could consider when you are considering the question of the damages he has sustained by some man consorting with his wife afterwards. What can any husband expect who has separated from his wife, who he knows has no means? What will follow? Why, that in the ordinary course of things she may yield to the temptation of securing support from some other man. Therefore, take those matters all into your consideration in determining whether or not the petitioner is entitled to damages, and if so to what amount.

9. (In the course of the summing up a juror asked what were the means of the co-respondent).

The President:---I am not at all surprised at your asking the question; but that indicates the great misapprehension that exists on this subject. It is not a single case, but it is very often asked. But do you not observe, on the principles that I have explained to you, the means of the co-respondent have nothing to do with the question? The only question is what damage the petitioner has sustained, and the damage he has sustained is the same whether the co-respondent is a rich man or a poor man.

10. The case must therefore be remanded to the learned Judge to be dealt with in accordance with the foregoing observations. It may be necessary for him to take further evidence with regard to some of the abovementioned material facts. That is a matter for the learned Judge.

Newbould J.

11. I agree.

Buckland J.

12. I agree.

13. Thereupon, the case was remanded to the District Judge and on the 23rd of December 1924, the District Judge sent up the case again with findings, that (i) the petitioner was a Christian and was a resident of Chittagong when he presented the petition, (ii) the marriage was solemnised in Scotland but the adultery complained of took place in Calcutta, (iii) the petitioner allowed his wife to stay in Calcutta and take up employment there and when the adultery took place she was not living with the petitioner, (iv) the petitioner's children had already been sent to school at Darjeeling and the petitioner will not have to make new arrangements to look after them except, during the holidays; and taking into consideration these facts the learned District Judge assessed the damages at Rs. 3,000.

14. On that the following order was passed on 13ths January 1925:

Sanderson C. J.

15. This case was remanded to the learned District Judge for certain findings. The learned District Judge has now come to a conclusion in respect of the matters about which this Court desired the findings; and the result is that, in my opinion, the decree should be confirmed.

Newbould J.

16. I agree.

Rankin J.

17. I agree.

18. Thereafter, on the 24th February 1925, the above decree was varied as follows:

Sanderson C.J.

19. In this case we find it necessary to alter the order which was made by this Court on the 13th of January 1925.

20. In the first instance, the learned District Judge-made an order that the suit should be decreed and that the petitioner should recover Rs. 20,000 as compensation from the co-respondent. The decree came before this Court for confirmation and this; Court was of opinion that certain findings were necessary before the Court could confirm the decree, with the result that the matter was remanded to the lower Court for that purpose. The case was reheard on the 23rd December 1924 and the learned District Judge came to certain findings and held that the Court had jurisdiction to entertain the suit. But the decree of the learned District Judge dated the 23rd of December 1924 merely ordered that the damages should be assessed at Rs. 3,000 and that the petitioner was entitled to Rs. 25-1 as costs from the co-respondent. The decree then came before this Court again for confirmation and this Court confirmed the decree.

21. By an oversight, it was not noticed that the decree of the 23rd of December 1924 did not contain a decree for the dissolution of the marriage.

22. The result, therefore, is that we are of opinion, that it is necessary to correct this mistake, and the order which we now make is that the decree of the 24th of March 1924 of the learned District Judge, so far as it decrees the dissolution of the marriage, and the decree of the learned District Judge dated the 23rd of December 1924 with respect to the damages, and costs are confirmed.

23. We give a direction to the lower Court to return, the office copy of the decree which was made by this. Court on the 13th of January 1925.

Newbould and Rankin JJ.

24. agreed.