

Hiralal-Mahabir Pershad *v.* Mutsaddi Lal-Jugal Kishore (Dua, J.)

little difficult to found the liability of the defendants on the basis of the daily entries on the record. Once the conclusion of the Court below discrediting the plea of payment to third parties as a result of the alleged settlement is upheld, no other point can sustain the appeal. In regard to the notification, the appellant has taken two alternative positions. In the first instance, according to him, the resolution to settle the accounts before time was passed before the date of the notification and, therefore, the notification did not affect the appellant's case. Secondly, he has argued that the notification is wholly inapplicable to the case in hand. In either case, in my opinion, the appellant cannot succeed because of our conclusion that no payments are proved to have been made as a result of the alleged settlement. Reference to a Single Bench decision of this Court in *Thakar Das Bagai v. Dr. C. N. Bhargava* (6), by Shri Bishamber Dayal is, therefore, hardly relevant. The decision in *Abdulla Ahmed v. Animendra Kissen Mitter* (7), in which the rule of law laid down by Viscount Simon, Lord Chancellor in *Luxor (Eastbourne) Ltd. v. Cooper* (8), that contracts with commission agents do not follow a single pattern and in each case one has to ascertain the express terms of a given contract, is also of little assistance to the appellant.

For the foregoing reasons, this appeal fails and is hereby dismissed but without any order as to costs.

R. P. KHOSLA, J.—I agree.

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K.S.K.

APPELLATE CIVIL

*Before J. N. Kaushal, J.*

GURDIAL KAUR,—*Appellant.*

*versus*

MUKAND SINGH,—*Respondent.*

F.A.O. No. 40-M of 1963.

May 3, 1966.

*Hindu Marriage Act (XXV of 1955)—S. 9—Application under—Relationship of husband and wife denied by the Respondent—Special Courts under the Act—Whether can determine the matter.*

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(6) 1963 P.L.R. 1054.

(7) (1950) 1 S.C.R. 30.

(8) 1941 A.C. 108.

*Held*, that special Courts have been set up under the Hindu Marriage Act for the trial of those matters which are specifically dealt with in this Act. In such a situation, those Courts necessarily have jurisdiction to decide whether the relationship of husband and wife exists between the parties in case such relationship is denied by the respondent to the petition.

*First Appeal from the order of the Court of Shri Radha Krishan Battas, Sub-judge, 1st Class, Rajpura, dated the 16th May, 1963, granting a decree for restitution of conjugal rights against the respondent and awarding costs of the petition to the petitioner.*

D. C. AHLUWALIA, ADVOCATE, for the Appellant.

M. R. SHARMA, ADVOCATE, for the Respondent.

#### JUDGMENT

KAUSHAL, J.—This is an appeal against the order of the Subordinate, Judge, First Class, Rajpura, dated 16th May, 1963, by which a decree for restitution of conjugal rights has been granted in favour of Mukand Singh against Gurdial Kaur.

The allegation of Mukand Singh was that he and Gurdial Kaur were married at village Bhat Majra some nine years before the filing of the application. They lived together as husband and wife for some time, but no issue was born. About seven months before the application was filed, the mother and maternal uncle of the wife took her away on a pretext of a short visit. After that, however, Gurdial Kaur did not return to the house of Mukand Singh, applicant. In spite of the best efforts of Mukand Singh, Gurdial Kaur refused to come back and perform the duties of a wife.

Before filing the present application, a complaint had been filed by Mukand Singh under section 494, Indian Penal Code, alleging that Gurdial Kaur and one Bachan Singh had entered into a marriage. The complaint, however, was dismissed and the accused were acquitted.

Gurdial Kaur denied all the allegations made in the application and stated that she was never married with Mukand Singh. The reason for filing the application for restitution of conjugal rights, according to Gurdial Kaur, was that the applicant wanted to succeed to the property of the mother of Gurdial Kaur if he succeeded in proving the marriage. An objection was also raised that the Court had no jurisdiction to try the application.

## Gurdial Kaur v. Mukand Singh (Kaushal, J.)

The following issues were framed in the case—

- (1) Whether the respondent is the wife of the applicant ?
- (2) Whether this Court has jurisdiction to try this application?
- (3) If issue No. 1 is proved, whether the respondent without reasonable excuse has withdrawn from the society of the applicant ?
- (4) Relief.

Issues No. 1, 2 and 3 were decided against Gurdial Kaur and as a result a decree for restitution of conjugal rights was granted.

The first point urged by Shri D. C. Ahluwalia, on behalf of Gurdial Kaur, is that the Court had no jurisdiction in the matter. According to him, the Court could only grant a decree if the relationship of husband and wife was admitted. The contention is that section 9 of the Hindu Marriage Act contemplated that the application could be filed either by the husband or the wife, and if the relationship of husband and wife was denied, it was, for the civil Court to give a declaration regarding the relationship. I do not agree with the learned Counsel.

*Shri Raja Durga Singh of Solan v. Tholu and others* (1), was relied upon by Shri Ahluwalia in support of his contention. This case, however, is not in point. While interpreting sub-section (3) of section 77 of the Punjab Tenancy Act, their Lordships of the Supreme Court held that there was no entry or item relating to a suit by or against a person claiming to be a tenant whose status as a tenant was not admitted by the landlord. It was further observed that the legislature barred only those suits from the cognizance of a civil Court where there was no dispute between the parties that a person cultivating land or who was in possession of the land was a tenant.

The next case relied upon by the learned counsel is *Shankarappa v. Basamma* (2). It was held in this case that "a suit brought by a Hindu wife for an injunction perpetually restraining her Hindu husband from contracting a second marriage falls within section 9, Civil Procedure Code, and is cognizable by a civil Court. It is plain that

(1) 1962 P.L.R. 837.

(2) A.I.R. 1964 Mysore 247.

the suit is of a civil nature. Its cognizance is not expressly or impliedly barred by any provision in the Hindu Marriage Act. The suit is clearly permitted by section 54, Specific Relief Act." Obviously, the Mysore High Court was dealing with a totally different question. Matters regarding which jurisdiction has been conferred on the District Court by the Hindu Marriage Act have to be decided by that Court. In application under section 9 of the Hindu Marriage Act, the Court has to determine in case of dispute whether the relationship of husband and wife exists between the parties and then to proceed to find out if the case is fit for granting a decree for restitution of conjugal rights. There is no doubt that special Courts have been set up under the Hindu Marriage Act for the trial of those matters which are specifically dealt with in this Act. In such a situation, those Courts necessarily have jurisdiction to decide whether the relationship of husband and wife exists between the parties. The situation is analogous to the trial of eviction cases under the Rent Acts. In *Bajinath Sao v. Ram Prashad* (3), it has been laid down that "if a Court or a tribunal with limited jurisdiction is given authority under law to decide a particular matter, but the decision of that particular matter depends upon certain preliminary findings of fact, that tribunal must have jurisdiction to decide those preliminary points of fact, and the civil Court will have no jurisdiction to go into the correctness or otherwise of the findings of the tribunal in regard to those preliminary questions of fact. When an application for eviction is made under the Act, the House Controller or the Commissioner, as the case might be, has jurisdiction to find out whether the parties stand in the relation of landlord and tenant." Similar view has been taken by this Court in *Punno Ram v. Thakar Dass*, Civil Miscellaneous No. 987 of 1956, decided on 6th August, 1957 and *Badri Parshad v. Bhuru Mal*, Civil Revision No. 607 of 1958, decided on 11th September, 1959. This proposition of law also finds support from the decision of the Supreme Court in *Rai Brij Raj Krishna and another v. Messrs. S. K. Shaw and Brothers* (4). I would, therefore, hold that in spite of the fact that Gurdial Kaur denied her marriage with Mukand Singh, the lower Court had jurisdiction to decide the application under section 9 of the Hindu Marriage Act.

Regarding issue No. 1, the applicant gave his own statement and examined Sadhu Singh and Harnam Singh of his village. Both these

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(3) A.I.R. 1951 Patna 529.

(4) A.I.R. 1951 S.C. 115.

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witnesses stated that Gurdial Kaur was married to Mukand Singh in village Bhat Majra and they were members of the marriage party which had gone for that purpose. They had further deposed that Mukand Singh and Gurdial Kaur lived together as husband and wife and Gurdial Kaur only went away about one-and-a-half years before their statements were recorded. The learned trial Judge has believed this evidence. No serious criticism could be levelled against the testimony of these two witnesses and in view of the circumstances, which had been mentioned by the trial Court, the statement of Mukand Singh himself assumes great importance. Gurdial Kaur is aged about twenty-five years and she claims to be unmarried. According to her maternal-uncle, she was not even engaged anywhere. The elder sister of Gurdial Kaur was, however, married when she was fourteen or fifteen years of age. It is rather unusual that Gurdial Kaur continued to be unmarried till the age of twenty-five. The explanation given by the mother of Gurdial Kaur for not marrying her till such an advanced age is that she had a superstition that she would become widow if she was married before the age of twenty-five years. According to her, this idea was given to her by a Pandit. Nurata Singh, the maternal uncle, however, did not give any such explanation when he was cross-examined on the same point. The story of this so-called superstition has not impressed me.

According to the evidence of Nurati, the mother of Gurdial Kaur, Mukand Singh is a total stranger to them. His village is three-and-a-half miles from the village of Gurdial Kaur. It passes one's comprehension as to how should a man think of laying claim to a girl if the parties are total strangers to each other.

The evidence examined on behalf of Gurdial Kaur was of a negative character; therefore not of much value. The learned trial Judge has come to a correct conclusion after a thorough appreciation of the evidence examined on both sides.

The learned trial Judge had relied upon entries in the electoral roll prepared in the year 1959, exhibits P.1 and P.2. In these entries, Mukand Singh and his wife Gurdial Kaur were shown to be living in house No. 15 in village Rau Majra. Shri Ahluwalia argues that an entry in an electoral roll has very little probative value and he relies upon *Kewal Chand-Kastoor Chand v. Samirmal Jaini and another* (5). Even if this evidence is excluded, the finding recorded by the lower Court cannot be said to be erroneous inasmuch as the oral

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(5) A.I.R. 1953 Nag. 146.

evidence inspires confidence and is sufficient to give a finding in favour of Mukand Singh. Issue No. 1 was, therefore, rightly decided in favour of Mukand Singh. It is held that Gurdial Kaur is the wife of Mukand Singh respondent.

In view of the denial of marriage by Gurdial Kaur, issue No. 3 in fact did not arise. Since Gurdial Kaur claims to be unmarried, it is obvious that she without reasonable excuse withdrew from the society of Mukand Singh respondent.

No other point was argued by the counsel for the appellant and, consequently, this appeal fails and is dismissed with costs.

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K.S.K.

REVISIONAL CIVIL

Before R. S. Narula, J.

N. C. MAITRA,—*Petitioner*

*versus*

DESH BANDHU GUPTA AND OTHERS,—*Respondents.*

Civil Revision No. 99-D of 1966.

May 6, 1966.

*Code of Civil Procedure (V of 1908)—Ss. 2(17)(b), 80 and 115—Securities Contracts (Regulation) Act (XLII of 1956)—S. 4(2)(iii)—Nominee of the Central Government on the governing body of a recognised stock exchange—Whether a public officer—Suit for damages for defamation or libel against him in respect of communication made by him to an office-bearer of the Stock Exchange—Whether can be instituted without notice under section 80, C.P.C.—Service of such notice—Whether relates to jurisdiction of the trial Court—Erroneous decision on such question—Whether can be set aside in revision by High Court—Pure findings of fact—Whether can be interfered with in revision.*

*Held*, that a nominee of the Central Government on the governing body of a recognised stock exchange is a public officer being in the service and pay of the Government. Hence a suit for damages for defamation or libel against him in respect of the contents of a communication made by him to an office-bearer of the Stock Exchange cannot be instituted without serving him with a notice under section 80 of the Code of Civil Procedure.