

(1916) 05 AHC CK 0012**Allahabad High Court****Case No:** None

Panna Lal

APPELLANT

Vs

Kasturi

RESPONDENT

Date of Decision: May 27, 1916**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 23
- Criminal Procedure Code, 1898 (CrPC) - Section 522

Citation: (1916) ILR (All) 520**Hon'ble Judges:** Piggott, J; Lindsay, J**Bench:** Division Bench**Final Decision:** Allowed

Judgement

Piggott and Lindsay, JJ.

This is an appeal against the order of the First Additional District Judge of Aligarh passed in an appeal which was brought by the plaintiff respondent Panna Lal against a decree of the Munsif of Bulandshahr. The order which is complained of is one purporting to be under Order XLI, Rule 23, of the Code of Civil Procedure. The learned Additional District Judge has ordered the case to be remanded for trial, as he says, *de novo*, to the court of first instance. The defendant Musammat Kasturi has appealed against this order and the memorandum of appeal raises two questions, one relating to the form of the order passed by the court below and the other, a more important one, relating to the competence of the plaintiff Panna Lal to maintain this suit. We will deal first with the second question and in order to understand the matter at issue we may state the following facts. There were three brothers, Raghunandan Lal, Mahadeo Prasad and Ram Jiwan Lal. Of these Raghunandan Lal died in the year 1910, leaving a widow Musammat Ram Piari, who died after him in the month of June, 1914. Raghunandan Lal also left a daughter, Musammat Chandrakala, with whose affairs we are concerned in the present case. Mahadeo Prasad, another of the brothers, died in the year 1912, and his widow

Musammat Kasturi is the appellant before us. The third brother Ram Jiwan Lal was alive at the time this suit was brought; he died during the pendency of the suit and is now, it is said, represented by his son, Lalta Prasad. It appears that after the death of her father the girl Chandrakala whose age is now about 13 or 14 years lived with her aunt, the appellant Musammat Kasturi. It is also said that Ram Jiwan Lal, the brother of the girl's father, lived in the same house. In the month of January, 1915, a complaint was made in the Criminal Court by one Rameshwar who had been married to an elder sister of the girl Musammat Chandrakala. The application was u/s 522 of the Code of Criminal Procedure and was directed against Musammat Kasturi, Ram Jiwan Lal and the latter's son, Lalta Prasad. The allegation made in the Criminal Court was to the effect that these three persons were detaining the girl Chandrakala in their house against her will and were preventing her from going to live with her maternal uncle Panna Lal, who is the respondent in the present appeal. This dispute was put an end to in the month of January, 1915. A petition was filed before the Criminal Court in which it was stated that, by reason of the intervention of certain friends of the family, the parties had settled their dispute and the three accused persons had agreed that the girl was to go and take up her residence with her maternal uncle, Panna Lal, and that she was to be allowed to take her property with her. After the girl went to live with Panna Lal it appears that Panna Lal entered into a contract of marriage on her behalf with Rameshwar, who was the husband of the girl's deceased sister. Panna Lal, it is said, made all the arrangements for her marriage with Rameshwar and the 17th of June, 1915, was fixed as the date of marriage. A few days before the date Musammat Kasturi, the appellant, went to the District Judge of Aligarh and put in a petition asking that she might be appointed guardian of the person of the girl, Chandrakala. Simultaneously with this petition Musammat Kasturi filed another petition in which she asked the court to issue an injunction restraining Panna Lal from having the marriage of the girl with Rameshwar performed on the 17th of June. A temporary injunction was issued by the District Judge, and the result was that Panna Lal was obliged to put off the marriage. The consequence of this is that present suit has been brought by Panna Lal in which he claims Rs. 1,000, as damages, on the allegation that the injunction which was sought against him by Musammat Kasturi was improperly sought and obtained and that by reason of postponement of the marriage he suffered damages, having made a number of costly arrangements for marriage ceremony. We may mention at this stage that since the 17th of June, 1915, the girl has as a matter of fact been married to Rameshwar, the man with whom the marriage contract had been made. The defence of Musammat Kasturi to this suit was to the effect that Panna Lal had no right whatever to enter into any contract of marriage on behalf of the girl, and that consequently it could not be said that she had applied for the injunction without reasonable and probable cause. In short her case was that Panna Lal had no cause of action for the suit.

2. The Munsif before whom the case was tried framed six issues. The first of these was whether or not the plaintiff had got any cause of action for the suit and was he entitled to maintain it. On this point the Munsif's finding was that the temporary injunction which was issued had given rise to a cause of action upon which the suit could be maintained, provided the plaintiff could show that he had suffered damage. The second issue was whether or not the plaintiff had any power to arrange the marriage of Musammat Chandrakala. On this point, after referring to certain authorities on Hindu Law, the Munsif was of opinion that the plaintiff had no right to make a contract of marriage in the presence of paternal relations. On the third issue the Munsif held that, assuming the plaintiff had authority to settle the marriage, it was not an unsuitable or improper one, although, as he said, the man Rameshwar with whom he contracted the marriage, was of no better status than one Piari Lal with whom, it is said, a previous arrangement for marriage had been made.

3. The fourth issue was whether the defendant obtained the injunction on wrong allegations and with a view to cause loss to the plaintiff. On this point the Munsif's finding was in favour of the defendant. He was not satisfied that the defendant obtained the interlocutory injunction in bad faith. Having decided these four issues the Munsif dismissed the case. He left undetermined two issues relating really to the amount of damages suffered by the plaintiff.

4. The fifth issue reads "Has the plaintiff suffered any loss owing to the injunction?" and the sixth issue reads "If yes, how much?"

5. On appeal the learned Additional District Judge has reversed the decree of the first court. He held that in the circumstances, which were made to appear in this case the plaintiff Panna Lal had authority to contract a marriage on behalf of the girl Chandrakala. He was also of opinion that Musammat Kasturi had no reasonable and probable cause for seeking this injunction from the Civil Court, and as a consequence of these findings he held that the Munsif should be directed to try out all that was left to be decided, viz. the amount of damages which was payable to the plaintiff. As regards the question of Panna Lal's authority to contract the marriage on behalf of the girl, it has been contended before us that, in the presence of paternal relations of the girl, Panna Lal, who is only the girl's maternal uncle, had no right to enter into this contract of marriage. There seems to be no dispute as to the law on the subject, and all the authorities have been referred to in a decision of this Court which is reported in *Kasturi v. Chiranji Lal I.L.R (1905) All. 265*. There can be no doubt that so long as there are competent paternal relatives in existence the maternal relatives of a girl have no authority to give her in marriage, and so *prima facie* it would appear that in the presence of Ramjiwan Lal, who was the girl's paternal uncle, Panna Lal had no power to arrange for her marriage to Rameshwar. It may, however, happen that the maternal relatives do acquire authority to contract the marriage on behalf of a girl, e.g. in cases where the paternal relatives refuse to

act or have disqualified themselves from acting. And it is probably on this ground that the learned Additional District Judge came to the conclusion that Panna Lal had in the circumstances of the case good authority to arrange for the girl's marriage. He pointed out that Ranjiwan Lal, the only surviving paternal uncle of the girl, was an outcaste and also referred to the fact that no objection had been raised to the proposed marriage. He further pointed out that in any case the defendant Musammat Kasturi was in no sense a really legal guardian of this girl under Hindu Law. We may refer again to the proceedings which were taken in the Criminal Court and which terminated with the compromise of the 15th of January, 1915. It seems to us that in view of those proceedings it is no longer open to Musammat Kasturi, or to the paternal relatives of the girl, to say that Panna Lal had no authority to act on the girl's behalf in this matter. We treat this compromise of the 15th of January, 1915, as amounting to an abdication of their functions by the paternal relatives. Ram Jiwan Lal, the girl's paternal uncle, and her cousin. Lalta Prasad, the son of Ramjiwan Lal, were both parties to the compromise, and if, as stated in this compromise, they had decided on the advice of their own friends to surrender the girl to the guardianship of Panna Lal, we think it is no longer open to them, or to Musammat Kasturi either, to put up the case that Panna Lal had no authority to enter into this arrangement of marriage. Again, it has been pointed out that before the girl was made over to the custody of her maternal uncle a marriage had been arranged for her by Musammat Kasturi with the consent, it is said, of Ramjiwan Lal, and it is argued that having regard to this fact, Panna Lal was not competent to go behind the previous arrangement for marriage and to enter into a new contract. Panna Lal's story was to the effect that he had no knowledge of the earlier arrangement. In the court of the first instance, at any rate, he pleaded denial of this fact. Be that as it may, it seems to us that the fact that the girl had been previously betrothed to a man named Pearey Lal would not under the Hindu Law constitute any legal obstacle to her being betrothed to another man, Rameshwar. It has been conceded that all that happens in a case of breach of contract of this kind is that one of the parties acquires a right to sue for damages for the breach of contract. So far as Musammat Kasturi is concerned we think that she is out of court altogether, for in no way can it be said that she had any authority, as the widow of the girl's paternal uncle, to make arrangements for the girl's marriage. No doubt if she had succeeded in obtaining from the court of the District Judge of Aligarh an order for her appointment as guardian of the girl's person she would then have been vested with full authority to make arrangements for the girl's wedding. Her application to be appointed guardian was dismissed, and it appears to us that when she made the application she had no status whatever upon the basis of which she was entitled to go to the District Judge and ask for the issue of this injunction. No doubt in a case of this kind, which is based upon an allegation that the defendant has been guilty of abuse of process of the court, it is for the plaintiff to show that the defendant acted without reasonable and probable cause. On the facts which have been set out, and about which there is really no dispute, it is proved to us that the plaintiff sufficiently

made out a *prima facie* case which threw upon Musammat Kasturi the burden of proving that she had reasonable and probable cause for the asking of this injunction. From what we have said it will be apparent that Musammat Kasturi had in fact no reasonable and probable cause for asking the District Judge to interfere in this matter. And we are satisfied from the evidence before us that her interference in this matter was not bona fide in the interest of the girl. It is important to notice here that in the application which Musammat Kasturi filed for the purpose of obtaining the temporary injunction not a word was said regarding the previous marriage contract arranged between the girl, Chandrakala and the man Piari Lal, and so Musammat Kasturi cannot be heard to justify her action on the ground that she was asking the Judge for an order which would protect her from liability in case there were afterwards any suit for the breach of contract of marriage with Piari Lal. We have no doubt therefore that on this part of the case the conclusion arrived at by the lower appellate court is quite correct.

6. We have now to deal with the other point which has been raised in the case, viz. the form of the order by which the learned Judge has remanded the case back to the first court. We have pointed out that six issues were framed in the case and four of them were decided. The last two are really one issue, viz. the amount of damages which the defendant is liable to pay to the plaintiff. We are told that both parties gave all the evidence at the trial which they desired to produce. In these circumstances we fail to see why the learned Judge thought it necessary to pass his order under Order XLI, Rule 23, instead of under Order XLI, Rule 25, the latter being on the face of it the more appropriate rule in this case. The Munsif had merely omitted to try the issue relating to damages. There is on the record all the evidence upon which a decision on this issue can be reached. We think therefore that the proper order which should have been passed in a case of this kind was one under Rule 25 directing the first court to come to findings on the 4th and 5th issues and to report them to the lower appellate court. We do not of course go the length of saying that the order which has been passed by the learned Additional Judge is an illegal order. We have been referred to a decision of this Court *Mata Din v. Jumna Das* I.L.R (1905) All. 691, in which it has been held that it is competent to an appellate court to remand a case u/s 562 of the Code of Civil Procedure, where the court of first instance having framed issues and recorded all the evidence, has decided the suit with reference to its finding upon one or more of the issues framed by it leaving other issues undecided. The provisions of Section 562 of the old Code, which corresponds with Order XLI, Rule 23, of the present Code, have received a liberal interpretation in this judgement. We are, however, dealing here in first appeal with an order of the learned Additional Judge and it is open to us to alter the frame of the order if we think there are good grounds for doing so. It may be observed here that the result of sending the case back under Order XLI, Rule 23, will only result in further expense to the parties.

7. One of the results will be that after the decision given by the court of the first instance there will be another appeal to the court of the Additional Judge. Now that the parties have laid all their evidence before the court, we fail to see why they should be subjected to the chances of further litigation than is necessary.

8. We, therefore, allow the appeal to this extent that for the order of the court below passed under Order XLI, Rule 23, we substitute an order under Order XLI, Rule 25. The court of first instance will be directed, upon tie evidence already on the record, to come to findings on the fifth and sixth issues and to return its findings on those issues to the lower appellate court. The learned Additional Judge after considering the findings will proceed to dispose of the appeal according to law. As regards costs we think the respondent is entitled to his costs in this Court.