Deoraj Misra Vs Mt. Abhai Raji

None

Court: Allahabad High Court

Date of Decision: April 4, 1927

Final Decision: Dismissed

Judgement

1. This is an appeal by the plaintiff under the following circumstances:

A suit was instituted by the appellant against Mt. Abhai Raji, a minor who was represented by her guardian, Mt. Umrai in the Courts below, for

restitution of conjugal rights. The trial Court framed four issues. After some evidence had been recorded, the parties presented an application

signed by their pleaders to the effect that parties would be bound by the statement of Munshi Balgobind Prasad, Pleader. On this application being

presented, the Court accepted the prayer of the parties and on the 21st of December 1925 Munshi Balgobind Prasad was examined and his

statement recorded. The learned Munsif thereupon decided the issues in the case according to the statement of Munshi Baigobind, the result of

which was that the plaintiff"s suit was decreed. Mt. Abhai Raji went up in appeal before the learned Additional Subordinate Judge of Jaunpur. He

set aside the judgment and decree of the lower Court and sent the case back to the Munsif for retrial on the merits holding that Mt. Abhai Raji was

not bound by the agreement entered into by her guardian and sister Mt. Umrai, Defendant No. 2. The attention of the learned Judge was called to

the case of Parbhu Dayal Vs. Jamil Ahmad and Another, He held that the agreement would be a sort of compromise, and, therefore, its validity

required sanction of the Court, and as no such sanction had been given by the Munsif in this case, it was not binding upon the defendant. We are of

opinion that the learned Judge is clearly wrong and misconstrued the observations of the learned Judges, who decided the case Parbhu Dayal Vs.

Jamil Ahmad and Another, We are of opinion that the minor was bound by the statement made by Munshi Balgobind Prasad in view of the clear

provision of Section 11 of the Oaths Act of 1873.

2. The learned vakil appearing for the respondent has argued that the petition which was presented to the Court, having been signed only by the

pleaders and not by the parties, the defendant was not bound by the undertaking, as under the vakalatnama special power was not given to refer

the matter. We are of opinion that there is no force in this contention: see the case of Wasi-uz-zaman Khan v. Faiza Bibi [1916] 38 All. 131. It

was also submitted by the learned vakil for the respondent that the provisions of Sections 9 and 10 of the Oaths Act could only apply by reason of

Section 8 to reference to a party to the case or a witness. We are unable to follow that argument, as in our opinion, when Munshi Balgobind

Prasad gave his statement before the Court, he was a witness who had been specially referred to by the parties.

3. We therefore, set aside the order of the lower appellate Court and restore that of the Court of first instance with costs.