(1934) 07 CAL CK 0004

Calcutta High Court

Case No: None

Beryl Gertrude Sadler		APPELLANT
	Vs	
Harry Reginald Sadler		RESPONDENT

Date of Decision: July 13, 1934

Acts Referred:

- Indian and Colonial Divorce (Jurisdiction) Act, 1926 - Section 1(4)

Citation: AIR 1935 Cal 456

Hon'ble Judges: Costello, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Costello, J.
This is an application by Enid Peychers, a married woman, for leave to intervene in a suit for dissolution of marriage brought by Beryl Gertrude Sadler against her husband Harry Reginald Sadler, the suit being based upon an allegation that on diverse and repeated occasions between October 1930 and September 1931 and indeed between that date and the month of June 1932 the respondent Harry Reginald Sadler committed adultery with the present applicant.

2. It appears that so far as the respondent is concerned, the suit is undefended, he neither having entered appearance nor made any answer to the petitioner''s allegations against him. The suit as an undefended suit appeared on the list before Buckland, J., on 3rd July, but upon the case being called on, counsel for the petitioner drew the attention of the Court to the fact that by some inadvertence, if not negligence, the woman with whom adultery was charged, that is to say, the present applicant, had never been served with a certified copy of the pleadings containing the charges or with a notice that she was entitled to apply for leave to intervene in the cause as required by the provisions of Rule 9 of the rules made u/s 1(4), Indian and Colonial Divorce (Jurisdiction) Act, 1926. This matter once more

brings into prominence the extraordinary anomaly and the glaring injustice which still exists as between the position of women charged with adultery where the suit is brought under the Indian and Colonial Divorce Jurisdiction Act and that of a woman charged with adultery in a suit brought under the provisions of the Indian Divorce Act of 1869 I have on a number of occasions pointed out that owing to what I consider the very unfortunate decision in the case of Ramsay v. Boyle (1903) 30 Cal 489, in a wife''s suit for divorce against her husband brought under the Indian Divorce Act of 1869, the Court has no power to allow the alleged adulteress to intervene, whereas in the case of a suit brought by a wife against her husband under the Indian and Colonial Divorce (Jurisdiction) Act, 1926, the alleged adulteress can intervene by reason of the provisions of Rule 9 made u/s 1(4) of that Act.

3. The startling and gross injustice of the position is at once apparent when it is observed that the right of a woman charged with adultery to intervene in a wife''s suit for dissolution of marriage and to defend her honour by denying: and rebutting the charges made against her depends not in any way upon her own nationality or her individual rights or personal status but entirely upon the nature of the domicile of the wife petitioner which, in effect, means the domicile of the husband respondent. Therefore the position is this: that if it so happens that Mrs. A brings a suit for dissolution of marriage against Mr. A and chooses to charge Mrs. or Miss B with having committed adultery with Mr. A, B cannot intervene in the suit but must remain outside powerless and helpless whatever foul allegations may be made against her, unless it happens to be the case that Mr. A is not domiciled in India but in England or Scotland.

4. Apart from the injustice inflicted on the woman charged with adultery, it is obvious that the situation might open the way to very grave abuses, because a woman who is desirous of getting rid of husband might deliberately implicate any particular woman, knowing that woman would not be in a position in law to come to Court to repudiate and falsify the charges made. The in justice of the present state of the law is intensified a thousand fold, in cases where as in the present instance the husband respondent does not choose to defend the suit brought against him by his wife. In such cases the woman charged with having committed adultery with the husband respondent is obviously left defenceless and without any sort of protection. In this particular case, if it had not fortuitously happened that the respondent Harry Reginald Sadler is said to be domiciled in England and not in India, the present applicant would have had no opportunity whatever of coming to Court to deny the charges which Mrs. Sadler has made against her.

5. The Court has called the attention of Government to this point on previous occasions, and it has been pointed out that this is undeniably a state of affairs which requires the intervention of the legislature at the earliest possible moment with a view to remedying the injustice which I have described. It is fortunate for the present applicant Enid Peychers that if it was to be her lot to be charged with

adultery at all, she is charged with having committed adultery with a man who is non-domiciled as regards this country, a fact which made it necessary for his wife to launch her petition under the Indian and Colonial Divorce Jurisdiction Act, 1926. Whether it was due to sheer inadvertence on the part of the petitioner''s solicitors or whether it is possible to ascribe an even more blameworthy reason for the omission to give notice to the alleged adulteress, the fact remains that the institution of the wife''s suit for dissolution of marriage did not either formally or informally bring to the attention of Enid Peychers the fact that serious charges of adultery were being made against her and she had no sort of intimation of that fact until at any rate the morning of the very day on which this suit appeared in the list for hearing. I am quite satisfied that but for the fortunate circumstance that this lady happened to notice in the newspapers that this case was down for hearing on the 3rd July, a decree might have been made in her absence and without her having any knowledge of the proceedings and she would have been deprived of any opportunity whatever of endeavouring to establish her innocence with regard to the charges brought against her. By the provisions of Rule 9 she has the right to intervene on applying to the Court within the time specified in a notice served upon her, and I am told that after the omission to serve such a notice had been brought to the attention of Buckland, J., the case was adjourned by him in order that a proper notice might be duly served. A notice was subsequently served and she now comes before the Court, asking that she may be allowed to intervene in the cause.

6. Mr. Surita on behalf of the wife petitioner has very properly taken no objection whatever to her being allowed to come into the suit and defend herself. The only point he has raised is as to the proper procedure to be followed in a matter of this kind. There appears to be no provision in the Rules of this Court corresponding to Rule 18 of the English Rules. By that Rule, an application for leave to intervene in any matrimonial cause has been made by summons to the parties supported by affidavit. In England, the application is ordinarily made to the Registrar and upon the return of the summons, leave may be given with such directions as to appearance and procedure as the Registrar shall think fit. I hold that in this Court an application for leave to intervene under the provisions of Rule 9 should also be made by summons supported by an affidavit but returnable before the Judge in Chambers and that when the order is made giving leave, it should contain or be accompanied with such directions as to appearance and procedure as the Court may think fit in the circumstances of the case. In the present instance, I give the applicant Enid Peychers leave to intervene in the cause-Beryl Gertrude Sadler v. Harry Reginald Sadler, and direct that she do file her answer to the petition within ten days. The cause title will be amended and the suit will be titled Sadler v. Sadler and Peychers. The petitioner is represented before me by Surita, but the husband respondent is not represented because his whereabouts are not known, or, at any rate, there is difficulty in discovering exactly where he is at the present time and so it was not possible to give him notice that this application would be made today. But

so that everything may be completely in order I direct that notice of the order, which I am now making, be served upon him by the petitioner at his last known address by sending a registered letter with an intimation that if he desires to raise any objection to the order which has been made, he must do so within six weeks from the receipt of that letter. Mr. Bonnerjee''s client is to have her costs in any event. Certified for counsel.