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Musammat Khairannissa Vs Mahamad Hussain Bara

Court: Calcutta High Court

Date of Decision: June 4, 1936

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 488

Citation: 167 Ind. Cas. 263

Hon'ble Judges: M.C. Ghose, J

Bench: Single Bench

Judgement

M.C. Ghose, J.
This is an appeal by a wife against her husband claiming deferred dower money of Rs. 1,000. The defendant husband is a

clerk at Shillong on a salary of Rs. 110 per month. He had married the plaintiff, and apparently they lived together for a period of 14 to 15 years,

at the end of which there was disagreement between the parties and she thereafter left his house and went to live with her parents at Sibsagar. Her

case was that she was driven out of the house at Shillong. The defendant"s case was that she became extremely insubordinate and of her own

accord she left his protection after he had duly pronounced a divorce on May 2, 1927. After the separation she instituted a maintenance case u/s

488, Criminal Procedure Code, and apparently obtained an ex parte order, but when she proceeded to execute the order, the defendant in 1930

produced the talaknama and thereupon the Court dismissed the plaintiff"s maintenance suit. The plaintiffs case was that she came to know of the

talaknama in January 1930, Thereafter, on July 15, 1930, the present suit was instituted. The plaintiff being a poor destitute woman was allowed to

sue as a pauper.

2. The trial Court dismissed the suit on the ground of limitation. The Court found that the talaknama was pronounced on May 2,1927. As a period

of three years had elapsed from the date of the divorce, the claim for dower money was extinguished by limitation. In appeal by the plaintiff the

Court of Appeal below affirmed the finding of the trial Court and held that the claim for dower money was barred by limitation. For the first time in

the Court of Appeal the plaintiff urged that if the claim for Rs. 1,000 be barred by limitation, the plaintiff may be granted a decree en the basis of

the deed of divorce produced by the defendant, for in that talaknama executed by the defendant on May 2,1927, he stated that he would pay the

dower money of Rs. 1,000 by monthly instalments, of Rs. 20. The Court of Appeal below held that the claim for a monthly instalment was not

made in the plaint nor in the first Court, and as she never accepted the offer made by the defendant in the talaknama she was not entitled to a

decree.

3. The first point in appeal is whether the plaintiff''s claim is governed by Article 116, Limitation Act, on the ground that the deed of dower was

registered according to the Muhammadan Marriage Registration Act of 1876. The argument appears to be without substance, for there is

apparently no kabinnama registered even under the Muhammadan Marriage Registration Act. All that there is the certified copy of the marriage

from the register of the Muhammadan Marriage Registrar. In that copy there is a column stating that the prompt dower was Rs. 500 and the

deferred was Rs. 1,000. Apart from this there is no other document registered or unregistered, it cannot be said merely because the amount of the

deferred dower was stated in the marriage which was registered under the Marriage Registration Act that the matter of the dower was in a

registered document.

4. The next point is whether the plaintiff''s claim for Re. 20 a month according to the talaknama executed by the defendant can be granted to her.

On behalf of the plaintiff it is urged that though the plaintiff claims the whole of Rs. 1,000 in the suit, in the third prayer made by her in the plaint she

stated that if for any reason the whole of the dower money could not be granted, anything which the plaintiff was found entitled to might be decreed

to her, and that this prayer is sufficiently wide to allow her to take advantage of the offer which the defendant made in talaknama. On the other side

it is urged that though she was duly informed of the talaknama in May, 1927, she refused to accept the talaknama. She made a case in the Criminal

Court claiming maintenance from her husband and he was dragged to the Criminal Court and he had to defend himself there. Then she brought

three suits, one suit for her ornaments which she said had been kept by the husband, and obtained a decree for Rs. 800, and a second case

claiming that the talaknama was inoperative until January 2,1930, when she first came to know of it. That suit was dismissed, it being found that she

knew of the talaknama in May, 192. The present is a third suit instituted by her. It is urged that the husband is a poor clerk and that it was her

refusal to live with the husband''s mother which led to disagreement and the defendant was forced to divorce her on the ground of her

unreasonable conduct and that in spite of the talaknama of May, 1927, she spurned his offer of Rs. 20 a month and even in the plaint she made no

claim on that basis and it was net till in the Appeal Court that she for the first time claimed Rs. 20 a month on the basis of the talaknama.

5. The matter is not free from difficulty. When a disagreement occurs between a husband and a wife, it is very difficult to apportion the blame. It

may be stated that the defendant may reasonably complain of the conduct of the plaintiff in the three years following the divorce in May, 1927. But

when all things are considered, it is to be noted that this poor woman lived with him as his wife for a period of 15 years, that is to say, during the

period of the bloom of her youth and now when her early youth is gone, she has been divorced. Apparently the defendant himself felt it right to

state in the deed of divorce that he would pay her deferred dower of Rs. 1,000 in instalments of Rs. 20 a month.

6. Having regard to all the circumstances it appears fair and equitable that the plaintiff should be allowed an instalment decree of Rs. 20 a month. It

is, however, to be noted that the claim at Rs. 20 a month arose on May 2,1927, when the divorce was pronounced. The claim for each month

would be barred at the end of three years. In that view when the suit was instituted on July 15,1930, the claim for three months, namely Rs. 60,

was barred by limitation. She is, therefore, now entitled to get only the balance of the deferred dower, namely Rs. 940 at the rate of Rs. 20 a

month. Let a decree be made accordingly that she is entitled to a decree for Rs. 910 in all, but that it will be paid to her by the defendant at the rate

of Rs. 20 a month until the sum is liquidated. The appeal is accordingly allowed and the plaintiff''s suit decreed in part. Having regard to all the

circumstances the parties will bear their own costs throughout. Leslie to appeal is refused.