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(1917) 06 CAL CK 0027

Calcutta High Court

Case No: None

Elias Joseph Solomon and Others — APPELLANT

Vs

Jyotsna Ghoshal — RESPONDENT

Date of Decision: June 11, 1917

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 132, 133

Citation: 44 Ind. Cas. 157

Hon'ble Judges: Greaves, J

Bench: Single Bench

Judgement

Greaves, J.

This is an application to examine on commission the defendant in the suit and the mother of the defendant. So far as the defendant is concerned, it appears on the evidence that he probably cannot get leave to come to Calcutta, and that he is not likely to come to Calcutta for the period of one year. He is at present serving in the Bombay Presidency. The plaintiffs undertake not to bring on this case before February next, and under, those circumstances the defendant at the same time undertakes that in the event of his coming to Calcutta before February next he will apply to be examined in Court de bene esse. Under these circumstances it seems to me that the beat course is that this application should stand over, so far as the defendant is concerned, until the reopening of the Courts after the Xmas vacation, and if before that time the defendant comes to Calcutta he will in accordance with his undertaking apply to be examined de bene esse, but if up to that time he is unable to come to Calcutta and still satisfies the Court that he will be unable to come before the trial of the action takes place, then, I think, the commission should issue. Under these circumstances the only order that I propose to make now is that so far as the defendant is concerned, the mutual undertakings being given, that I have already mentioned, this application is to stand over until the re-opening of the Court after the Xmas vacation.

2. So far as the defendant''s mother is concerned, it appears on the evidence that she is a lady who appears in public. The evidence that I have before me on her behalf consists of an affidavit of Jogendranath Banerjee, a clerk in the employ of the defendant''s solicitors. He states "that the lady is an old Hindu lady belonging to a high family, and according to the practices prevailing in the community a lady of her station in life does not appear in any Court of law, and the defendant apprehends that unless a commission is issued to examine her it will not be possible to have her evidence." The evidence on behalf of the plaintiff is contained in an affidavit of Sassoon Jacob Cohen, Manager of the estate of Mrs. Aneeza Joseph Solomon Joseph deceased, which estate is represented by the plaintiffs in this suit. He states in paragraph 6 that he is well acquainted with the lady and that she is not a pardanashin lady, on the other hand she is a cultured and educated lady of various accomplishments and freely appears in public and goes about in society and talks freely to Europeans and others face to face according to the manners and customs of European ladius. In paragraph 8 he states, that in October 1913 she came in an open carriage to their office at No. 6, Bentinck Street, and in paragraph 9 he states "that in December 1916 she personally called at the house of Mr. Satyendra Nath Sen, an Attorney, in Indian Mirror Street, and met the deponent and one of the plaintiffs, and talked to them in Mr. Sen''s presence." Under these circumstances I have got to decide whether I shall compel the lady to appear in Court to give her evidence. She does not fall within the provisions of Section 133 of the Code of Civil Procedure, which, Counsel for the plaintiffs admits for the purposes of this application, extends as well to the wives of the persons named therein as to the persons themselves. Accordingly the only section which is applicable is Section 132, which provides that women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court. On behalf of the plaintiffs it is said that as the lady has taken advantage of such privileges as attach to the abandonment of the parda system, she is not now entitled to claim the privilege of exemption from appearing in the witness-box which is provided by Section 132, and it is suggested that Section 132 applies exclusively to pardanashin or quasi-pardanashin ladies, and that it was designed for persons who observe the parda system. On behalf of the defendant it is said that although she does appear in public to a considerable extent, yet according to the customs and manners of the class and community to which she belongs she could not appear to give her evidence in the witness-box in Court. I do not think that the lady, who, I am satisfied on the evidence, has abandoned entirely the protection of the parda, and who, upon the evidence before me, I cannot see, has any intention of resuming it, ought to be compelled, having regard to the feelings of her class, to appear in the witness-box and I am not prepared to force her to do so, because I think, that the Indian point of view, which I think should be respected, would be that although the lady has abandoned the parda for the purposes to which I have already referred, it would be something in the nature of an outrage if I were to compel her, having regard to her social position, to appear in the witness-box to give evidence in Court. Under these circumstances I think it would be unfortunate if I am forced, which I do not think I am, by the words of the section to compel her to come to Court to give her evidence, as I think that Section 132 is wide enough to

cover her case. I feel some considerable doubt whether, having regard to the position she has adopted, I ought not to make her pay the costs of the privilege which she claims. On the whole I think I ought not to do so, having regard to the terms of the section and the reasons which I have already stated and which have induced me not to force her to come into the witness-box. The result will be that so far as she is concerned. I grant the commission asked for and the costs of this commission will be costs in the cause. Mr. H. K. Mitra, Barrister-at-law, will be the Commissioner. The commission to be returnable a month after the issue of the writ.