

(1873) 05 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 686 of 1872

Mussamut Aheeree
Heerahnee

APPELLANT

Vs

Sitaram Alias Kerra
Heerah

RESPONDENT

Date of Decision: May 9, 1873

Final Decision: Allowed

Judgement

Sir Richard Couch, Kt., C.J.

I take the description of the suit from the judgment of the Assistant Commissioner which is appealed from. He says:--"The plaintiff sues to have her marriage with the defendant cancelled on the strength of a bond executed by him before his marriage with her by which he engaged to consider his marriage void if he ever left the village in which the plaintiff and her friends reside, or in case of cruelty, or in the event of his ever marrying another wife." He founds his decision upon a breach of that agreement, saying the "violation of its conditions" (the conditions of the bond) "are shown to have occurred. I therefore reverse the order of the lower Court, and decree the plaintiff's claim by which her marriage with the defendant is to be deemed void, with effect from date on which it is shown he violated the condition of the marriage agreement." The Assistant Commissioner says that he can take notice of certain decisions of the Courts of Assam, which show what he considers to be a usage which would support this decree, but the usage which he describes is not one of persons making an agreement of this kind that a marriage about to be contracted is to become void on the happening of certain events, but a usage which recognizes that, amongst Hindus in Assam, there may be a divorce, and that persons may, by consent, effect one. That is very different from a usage which would sanction a contract of this description. I am supposing that the Assistant Commissioner had authority to decide this case according to what was the usage in Assam, and that the rules of Hindu law might be modified by the usage. I am not prepared to say that this is the case, and it is not necessary for us to give an opinion upon that point. In order to support this decision, we must come to the conclusion that an agreement of this kind by

which persons, when they are going to contract a marriage, agree that it shall become void on the happening of a certain event, for instance, as in this case, if the husband does not continue to reside in the wife's village, is valid, and can alter the law of marriage prevailing amongst Hindus. We think it is contrary to the policy of the law to allow persons by a contract between themselves to avoid a marriage on the happening of any event they may think fit to fix upon. According to this judgment, they might have agreed that the marriage should become void on the happening of any other event, such as, if the husband went to any particular place, or did some other act. An agreement of this kind is contrary to the policy of the law, and persons subject to it cannot be allowed to alter the law in that way. Therefore the decision of the Assistant Commissioner must be reversed. It is immaterial whether the contract was entered into or not, as it would not render the marriage void. A suit cannot be maintained upon such a bond as this.

2. The appeal must be allowed, and the suit of the plaintiff dismissed with costs.

Kemp, J.

I wish to add that I entirely concur in this judgment. One of the conditions of this bond was that, if the husband, who is a Hindu, married again, his first marriage would be considered null and void. Now, supposing this lady who now sues to have her marriage cancelled happened to be barren, the husband, if this contract was one which could be enforced, would not, by reason of that contract, be able to marry again without running the risk of having his marriage with the first wife cancelled. I think such a contract quite contrary to the policy and spirit of the Hindu law, and that the suit ought to be dismissed.