
(1915) 02 AHC CK 0043
In the Allahabad High Court

Dodraj and Others

APPELLANT

Vs

Musammat Natho

RESPONDENT

Date of Decision : 23-02-1915

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 6

Citation : AIR 1915 All 177(2) : 28 Ind. Cas. 597

Hon'ble Judges : George Knox, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

George Knox, J.—The lower Appellate Court has found upon evidence that Musammat Natho was the dharona wife of Chet Ram and his heir. This Hading is attacked in appeal. The contention is that the lower Appellate Court has erred in law in setting aside a finding returned by a lower Court when no objections had been taken in respect of it.

2. The lower Appellate Court had sent back to the Court of first instance this issue: Is the plaintiff the widow of Chet Ram? If it is found that her statement is true, there should also be a finding whether the dharona form is a valid form of marriage?

3. The Court of first instance found that Musammat Natho was not the widow of Chet Ram. It does not appear why it went on to consider the second of the issues returned to it, but it did, and it found that dharona was a prevalent form of marriage among Hindus.

4. A definite time was given for taking objections to these findings--no objection was taken within the time given.

5. The position before the lower Appellate Court then was this. Two findings had been returned by the Court of first instance, one finding under authority given, the second finding without authority given; but both finding only entitled to such

weight as attaches to finding by a Court of first instance upon any issue before it. No finding of a Court of first instance on a question of fact is a finding of fact behind which the lower Appellate Court cannot go. Order XLI, Rule 6, never says that after the expiration of the period fixed for presenting a memorandum of objections, the finding becomes final.

6. It is easily conceived that a Court of first instance might, return findings preposterous nil the face of them and that for some cause, negligence or otherwise, no objection is taken within the period fixed; is the lower Appellate Court, which is a final Court in questions of fact, to be bound by a finding on the face of it preposterous? All that this Order XLI, Rule 6, says is that after the expiration of the period fixed the Appellate Court should proceed to determine the appeal. The Appellate Court is responsible for its finding and cannot shift the responsibility upon any one else. The present case is very like the case I have just mentioned. The Court found Musammat Natho was not a dharona wife, but it also found that dharona was a prevalent form of marriage.

7. The lower Appellate Court in proceeding to determine the appeal found that the evidence in favour of Musammat Natho being a dharona wife was far more preferable than the evidence on the other side. This being the case, I hold that the lower Appellate Court would have failed in its duty and would have arrived at a wrong conclusion of fact on evidence, if it had blindly followed the Court of first instance.

8. The lower Appellate Court has arrived at its finding of fact upon evidence and in second appeal I have no right to go behind it. I dismiss the appeal.