
(1935) 01 AHC CK 0040
In the Allahabad High Court

Dorothy Emma Stuart

APPELLANT

Vs

Vernon Reginald Stuart

RESPONDENT

Date of Decision : 25-01-1935

Acts Referred:

Divorce Act, 1869 — Section 45

Citation : AIR 1936 All 488 : 163 Ind. Cas. 802

Hon'ble Judges : Thom, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Thom, J.—This is an application under Order 1, Rule 10, Civil P.C., by one Mrs. Mary Ivy Surdivall of the E.I. Railway Control Quarters, Forsyth Road, Lucknow. The applicant prays that this Court should direct that she be made a party to the Matrimonial Suit No. 7 of 1934, in which Mrs. D.E. Stuart is the petitioner and Mr. Y.E. Stuart, the respondent.

2. In her petition Mrs. Stuart has made allegations of adultery against the applicant Mrs. Surdivall and in these circumstances counsel has argued that, under the provisions of the CPC and the Divorce Act, this Court should grant the prayer of the petitioner and direct that Mrs. Surdivall be made a party to the divorce proceedings. Learned Counsel for the petitioner in the first instance opposed this application. He contended that under the provisions of the CPC and the Divorce Act this Court had no jurisdiction to permit the intervention of a person who had been named by a petitioning wife in divorce proceedings. In support of his contention he referred to the case of Ramsay v. Boyle (1903) 30 Cal 489. In that case a Full Bench held that the High Courts in India had no power under the CPC and the Divorce Act to permit the intervention of the person named by the petitioner in a divorce petition and who had not been called as a co-respondent by the petitioner. In the English Divorce Act there is a section which specifically gives the Court power to permit a subsequent intervention. There is no such specific section in the Indian Divorce Act. Section 7 of the Act

however does make a certain provision for following the rules and principles which are applied in the Court for divorce and matrimonial causes in England. The section runs as follows:

Subject to the provisions contained in this Act the High Courts and District Courts shall, in all suits and proceedings, hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are, as nearly as may be, conformable to the principles and rules on which the Court for divorce and matrimonial causes in England for the time being acts and gives relief.

3. Learned Counsel for the petitioner has contended that this section refers to substantive law and is not concerned with matters of procedure. He has argued that the permission to a party to intervene is a matter of procedure not of substantive law. As at present advised I am unable to agree with this contention. The words used in the section is "act" and I see no reason whatever for restricting that word as suggested by learned Counsel for the petitioner. Section 45, Indian Divorce Act, is in the following terms:

Subject to the provisions herein contained all proceedings under this Act between party and party shall be regulated by the Code of Civil. Procedure.

4. Now in the judgment in *Ramsay v. Boyle* (1903) 30 Cal 489, it was held that the words "all proceedings under this Act between party and party" in Section 45 apply only to proceedings after the parties to the suit have been determined and that the parties can only be determined in accordance with the provisions of that particular statute and particularly of Sections 10 and 11. The pre-sent application is under Order 1, Rule 10, Sub-clause (2). Under this sub-clause the Court may at any stage of the proceedings direct that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added. It may be that under this provision the Court can ex proprio motu direct that the person named by the petitioner in the plaint be added as a party to the proceedings. This matter however is not free from difficulty and, in view of the decision in *Ramsay v. Boyle* (1903) 30 Cal 489 by a Full Bench of the Calcutta High Court, I would be inclined to refer the question of the power of the Court to add to the array of parties the name of the person mentioned in the plaint to a Full Bench. This course however would delay the proceedings in the present petition. It is in the interests of the parties that the petition should be disposed of by the Court with all possible expedition. Mr. Chiene for the petitioner has stated that, in the circumstances, he is willing to withdraw all allegations made against the applicant Mrs. Surdivall. He has stated that he has other evidence upon which his client is entitled to a decree of divorce, and in order to avoid delay he is willing to withdraw all allegations of adultery so far as these allegations have been directed against Mrs. Surdivall. In these circumstances it is unnecessary to make any orders upon the present application.

5. I may say that the question raised by this application is one of great importance. In my opinion it is clearly in the interests of justice that a party who is named in a divorce plaint as being one of the persons with whom the respondent is alleged to have committed adultery should be allowed to intervene and defend his or her character against the aspersions which have been levelled against him or her. It appears that, at least, there is very grave doubt whether the person so named has the right under the law as it stands at present, to claim to be added as a party to the divorce proceedings. If the law is in doubt upon this point it is clearly the duty of the legislature to amend the Indian Divorce Act and make provision similar to the provision in the English Divorce Act to enable parties named in the divorce petition to be added to the parties to the proceedings. I make no order as to costs.

6. Let this case be put up on Friday, 1st February, for the filing of written statement and the settlement of issues.