

Allahabad High Court

Muhammad Muin-Ud-Din And Anr. vs Musammat Jamal Fatima on 13 May, 1921

Equivalent citations: 63 Ind Cas 883

Bench: Lindsay, K Lal

JUDGMENT

1. The question for consideration in this case is whether an ante-nuptial agreement made between a lady and her prospective husband and her prospective father-in-law, providing for the payment of a certain maintenance in the event of future dissensions between her and her prospective husband, is good in law and enforceable after her divorce or is opposed to public policy and void. The Courts below found that the agreement was not opposed to public policy and granted the plaintiff a decree for the account claimed by her. It appears that Mehdi Hasan, the husband of the plaintiff, had married twice before and to each occasion he seems to have ill treated his wife. The father of the plaintiff was, therefore, naturally anxious that something should be done in order to protect his daughter from similar ill-treatment and to secure for her a maintenance allow an in case His daughter and Mehdi Hasan could not live happily together. The agreement in question provided that in case of dissension or disunion the prospective husband and his father should be bound to pay an allowance of Rs. 15 per month in addition to the dower-debt to the lady or her life and certain property was hypothecated to secure the payment of that allowance. It is common ground that the plaintiff was divorced by her husband on the 14th of August 1917 and a formal deed of divorce was executed and registered come months later. But long before that date differences had apparently mopped up between them. The lady had gone back to the house of her father in 1912 and a notice, was sent by the husband to the father of the plaintiff on the 30th of October 1912, couched in insolent terms and demanding that the plaintiff should be sent back to his house with her jewellery. There was other evidence too to show that there had been dissensions between the plaintiff and her husband from about that time. On that evidence the Courts below awarded to the plaintiff the allowance mentioned in the agreement from the 30th of October 1912.

2. The learned Counsel for the appellants contends on the authority of the decision in Bai Fatma v. Ali Mahomed Aiyab 17 Ind. Cas. 946 : 37 B. 280 : 14 Bom. L.R. 1178, that the agreement was unenforceable; but that was a case in which a person, who had a wife living and wanted to marry another, had entered into an agreement with his first wife that he would pay her a certain allowance as maintenance, if any disagreement took place between her and him thereafter. The agreement in that case was treated as opposed to public policy, because it encouraged a separation between the husband and his wife. The agreement in the present case was executed before marriage in order to restrain the prospective husband from ill-treating his wife, or behaving improperly towards her or capriciously turning her. The dower-debt payable to the plaintiff was undoubtedly some security against a capricious divorce, but that was evidently not considered enough to protect her from ill treatment; and the agreement in question was obtained to secure her against ill treatment and to ensure for her a suitable amount of

maintenance in case such treatment was meted out to her. In view of the circumstances established we do not consider that the agreement in the present case offended the provisions of Section 23 of the Indian Contract Act (IX of 1872) or encouraged or facilitated a reparation between the plaintiff and her husband. The marital rights ended with the divorce; but the contrast subsists till the plaintiff dies or breaks it, and so long as the right to maintenance lasts, it cannot be treated as devoid of consideration nr opposed to public policy. The finding of the Court below that the dissensions existed from the 30th of October 1912 is conclusive and cannot be disturbed in second appeal. The appeal, therefore, fails and is dismissed with costs? including in this Court fees on the higher scale.