

**Musammat Khurshedi Begam Vs. Khurshed Ali**

**LegalCrystal Citation :** [legalcrystal.com/472451](http://legalcrystal.com/472451)

**Court :** Allahabad

**Decided On :** Jun-29-1914

**Reported in :** AIR1914All452; 25Ind.Cas.213

**Judge :** Sunder Lal, J.

**Appellant :** Musammat Khurshedi Begam

**Respondent :** Khurshed Ali

**Judgement :**

Sunder Lal, J.

1. This appeal arises out of a suit for the restitution of conjugal rights instituted by the plaintiff Khurshed Ali, against his wife, Khurshedi Begam, and her father Hashmat Ali. His case is that he was married to Khurshedi Begam in August 1907 and lived with her at her house in Kasha Hapur for some months. He then left for Indore in search of service which he obtained in the Police Department of the Indore State. He returned back to Hapur about a year ago. It appears that the plaintiff has no property or income of any kind nor has he a house of his own. On the other hand his wife Khurshedi Begam owns property said to be worth about Rs. 20,000 which she has inherited from her maternal grandfather and from her former husband. The wife is about twenty years in age and the plaintiff is a few years older.

2. On his return to Hapur plaintiff began to live with the defendant at her father's house but after residence for a few months. at his father-in-law's place he seems to have persuaded his wife to come over to live with him at a house taken on rent where the plaintiff's father also resided. He there seems to have persuaded his wife to execute a power-of-attorney in his favour to enable him to manage her property. So far the couple seem to have lived in amity and happiness, but ill-feelings and discord, arising, no doubt, out of the plaintiff's desire to appropriate his wife's property soon began to manifest themselves. Acting under the authority of the power, of-attorney the plaintiff disposed of a grove belonging to her without her consent. He tried to sell another property of the wife notwithstanding her remonstrances, and according to the defendant he began to abuse and ill-treat her on her refusing to consent to the sale. The relations between them became so strained that she was compelled to fly from her husband's house and seek refuge at her father's. The plaintiff threatened violence to her and to her father and the result was that on 2nd June 1911 Mr. Pearson, Magistrate of Meerut, ordered the husband to furnish security for keeping peace, to prevent him from committing acts of violence against the wife or her father. The plaintiff had on his part filed this suit for the restitution of conjugal rights on 8th February 1911. The defence among other grounds urged that the plaintiff had divorced his wife and in any case until the payment of a sum of Rs. 5,000, due to her

on account of her prompt dower, the plaintiff was not entitled to a decree for the restitution of conjugal rights. Babu Sushil Chunder Banerji, who tried the suit in the first instance, found on both these pleas for the defendant and dismissed the suit. His decree on both these points was set aside on appeal by M. Mubarak Husaim, Khan Bahadur, Additional Judge of Meerut, on 22nd April 1912, and the case remanded for the trial of the following issue in the case as formulated by him, viz.:

Has the plaintiff been treating the defendant No. 1 cruelly? Is he entitled by law to the recovery of his wife unconditionally, or subject to any condition.

3. The case then came up for hearing before B. Sumer Chand, Munsif, (who had succeeded B. Sushil Chunder Barerji) who found for the plaintiff and decreed the claim. The defendant, Mummmat Khurshedi Begam, appealed against the said decree. The appeal was heard by M. Mubarak Husain, Khan Bahadur, who has decreed the claim for the restitution of conjugal rights subject to the condition that he (the husband) will not remove her, unless she herself agrees to that, from her own house in which she lives at present. Nor will, he interfere with her father living with her if so desired by her.' His judgment concludes with an order that; The defendants are hereby enjoined to allow the plaintiff to live with and exercise all the conjugal rights with defendant No. 1 wherever she lives.'

4. The decree made by him is drawn up exactly on these terms.

5. The husband has submitted to the decree, but the wife has appealed against it on grounds set forth in the memorandum of appeal filed in this Court.

6. For the purpose of disposing of the points taken in appeal, it is necessary in the first place to consider the findings at which the learned Judge has arrived on the issue of cruelty and ill-treatment formulated by him. He is of opinion that it had been folly made out by the defendant's evidence that on her leaving her father's house and going over to her husband's, the latter had been trying to force her to sign deeds disposing of her property and on her refusing to do so, he (the husband) has been beating and abusing her. To quote the words of the learned Judge: Having become tired of such treatment the defendant left her husband's maternal uncle's house, where the couple had been living on the morning of 17th January 1911 and sought her father's protection. The husband followed her there on that day, and on 20th January 1911 asked her to go back with him. She declined to go with him and it is said that the husband then threatened to cut off her nose. This may be an exaggeration, but I am quite convinced from the evidence on the record that the plaintiff did abuse and even beat the wife with a view to force her to give him a free hand in the disposal of her property. The plaintiff is a bad-tempered man and has been bound down by the Criminal Court to keep peace on the application of his father-in-law.'

7. It is for these reasons that he has made the conditional decree in the terms set forth above.

8. The questions raised in appeal are:

(a) whether upon the findings, the Court below ought not to, have dismissed the suit, and

(b) whether the Court below was competent to make the decree in the terms in which he has made it. The Muhammadan Law', says Mr. Ameer Ali in Volume II of the work on Muhammadan Law at page 462 (3rd Edition), lays down distinctly that a wife is bound to live with her husband, and to follow him wherever he desires to go; and that on her refusing to do so without sufficient or valid reason, the Courts of Justice, on a suit for restitution of conjugal rights by the husband, would order her to live, with her husband.

9. According to Sir Roland Wilson the wife is bound

(a) to live in the house of the husband,

(b) to admit the husband to sexual intercourse etc.

10. Mr. Justice Abdur Rahim in his work on Muhammadan Jurisprudence observes : The husband has the right to insist that the wife should live in his house and afford him access, abstain from undue familiarity with strangers, obey him in all reasonable matters and be faithful to him' (page 333),

11. As observed by their Lordships of the Privy Council in the well-known case of Moonshee Buzloor Buheewi v. Shumsocmnissm Begum 11 M.I.A. 551 at p. 610 : 8 W.R.P.C. 3 : 2 Suth. P.C.J. 59 : 2 Sar. P.C.J. 259 : 20 Eng. Rep. 208, 'The matrimonial law of the Muhammadans, like that of every ancient community, favours the stronger sex.... The cases already cited are to the effect that he may compel her to return to his house, if she has left it.... In fact, the principle of keeping a man's hareem in seclusion and\* under his control is so essential a part of the framework of Oriental society, that it is naturally assumed and taken for granted by the Mussulman expounder, of the law. '

12. The wife may refuse to perform the obligation thus imposed upon her by the Muhammadan Law if the husband be guilty of cruelty. Their Lordships further observe:

'The Muhammadan Law, on a question of what is legal cruelty between man and wife, would probably not differ materially from our own, of which one of the most recent expositions is the following: There must be actual violence of such a character as to endanger personal health and safety; or there must be a reasonable, apprehension of it.' The Court', as Lord Stowell said in Evans v. Evans. 1 Hagg. Con. Hop. 37, 'has never been driven off this ground.

13. Later on at page 612 their Lordships make the following general observations as to what Indian Courts might do in such cases. They say: 'An Indian Court might well admit defences founded on the violation of those rights, and either refuse its assistance to the husband altogether, or grant it only upon terms of his securing the wife in the enjoyment of her personal safety, and her other legal rights; or it might, on a sufficient case, exercise that, jurisdiction which is attributed to the Kazi by the fatwa (if the law, indeed, warrants such a jurisdiction) of selecting a proper place of residence for the wife, other than her husband's house. '

14. Further on at page 615 their Lordships thus sum up the law. 'It seems to them clear that if cruelty in a degree rendering it unsafe for the wife to return to her husband's dominion were established, the Court might refuse to send her back. It

may be, too, that gross failure by the husband of the performance of the obligations which the marriage contract imposes on him for the benefit of the wife, might, if properly proved, afford good grounds for refusing to him the assistance of the Court. And, as their Lordships have already intimated, there may be cases in which the Court would qualify its interference by imposing terms on the husband.' The principles laid down by their Lordships of the Privy Council were further explained and applied by this Court in the case of *Husaini Begani v. Muhammad Rustam, Ali Khan* 29 A. 222 : 4 A.L.J. 60 : A.W.N. (1907) 27. Their Lordships in that case refused to grant the plaintiff a decree for the restitution of conjugal rights in view of the offer made and the undertaking given by the wife to receive the husband into her own house and there resume conjugal relations with him. They, however, reserved the husband leave to sue again for the restitution of conjugal rights in the event of the wife not fulfilling her undertaking.

15. It is evident from the finding and the circumstances of the case that the husband is an impecunious, selfish and unscrupulous young man, who cares more for his wife's property than for her, and who does not hesitate to resort to violence and abuse, to coerce her into yielding to his views. Within the very short time that they lived together he first induced her to give him a power-of-attorney to manage her property, and took advantage of it to dispose of a grove belonging to her -without her consent. Not abashed at all at what he had done he asked her to consent to the sale of another grove and on her refusing to do so, resorted to violence and abuse. He made her life in her husband's house intolerable and unbearable and compelled the wife to seek refuge and safety in her father's house. He followed her there with abuse and threatened violence both to her and her father, so much so that a Magistrate considered it necessary, to bind him down to keep peace for a year. It was under the circumstances not at all safe to, leave the young wife to the tender mercies of: an ill-tempered, unscrupulous and unkind husband like the plaintiff, who had so little regard for his wife.

16. The learned Judge of the Court below, who is a Muhammadan Judge of standing and experience, has, I think, rightly refused to make an unconditional decree for the restitution of conjugal rights. The husband has, not complained of the decree and: has not appealed against it The wife, however, is not satisfied and has appealed to this Court. The question now before me is, was the learned Judge right in making, the conditional decree he has passed in this case?

17. A decree for the restitution of conjugal rights at the suit of the husband is generally, a decree directing the wife to return to the husband's home to live with him. The learned Judge has found himself unable to give such a decree. He has, however, ordered the wife to receive him into her own house in which her father also is living, and is to be permitted to live without any objection on the husband's part.

18. Where the husband has been found to be guilty of violence and cruelty towards the wife the Courts have, in many cases, anxious as they always are to bring married couples to live together in peace and amity, attempted now and then to lay down conditions in the decree which the husband was required to comply with for enforcing his decree for, the restitution of conjugal rights. In the case of *Bapalal Tara Chand v. Bai Amrit* (1875) P.J. Bom. 247 a Judge in the Bombay Presidency gave a decree that 'the woman to return to her husband after he shall have executed a bond with two securities in Rs. 500 each and his own cognizance in Rs. 500 either before this Court or a Magistrate to abstain from all personal violence towards her.' The

Bombay High Court, set aside this condition both on the ground that the Court could not impose it, as also on the ground that it was not required under the circumstances of the case. In the case of *Begam v. Khuda Baksh A.W.N. (1892) 77* a Subordinate Court in these Provinces made it a condition of his decree for the restitution of conjugal rights that the husband should enter into a bond with one surety for Rs. 1,000 not to do his wife any bodily harm.' The High Court set aside that decree and dismissed the suit for the restitution of conjugal rights. In the case of *Motilal. v. Bai Chanchal 4 Bom. L.R. 107* the District Judge in decreeing the suit for the restitution of conjugal rights directed the husband to provide a suitable separate house for defendant-appellant, she do live there and allow plaintiff to enjoy his conjugal rights, with her.' The Bombay High Court held that the-Judge was not entitled to impose such a condition and directed him to find whether the plaintiff had been guilty of such legal cruelty as would disentitle him to the relief sought *Motilal Mahasukhbai v. Bai Chanchal 4 Bom. L.R. 107*.

19. The judgment of the Privy Council already quoted is, I think, an authority for ' the Courts imposing the necessary terms upon the husband for securing the wife in the enjoyment of her personal safety and her other legal rights. Whether this is a case for the imposition of any terms at all for that purpose and whether the term imposed sufficiently secures the personal,, safety of the wife, is the only question in this case. What provision does the decree of the Court below make to safeguard the defendant in this respect? It prevents the husband from removing her from her own house and away from the protection of her father. If, however, the husband still chooses to be ill-tempered and violent the decree only transfers the scene of violence and cruelty from the husband's own house to the home of the lady. It is true that the learned Judge has provided for the residence of the father of the wife in the same house and thus place her within easy reach of protection from physical violence at the hands of the husband. Is a husband who can only be permitted to live with the wife with these extraordinary safeguards entitled to any assistance at the hands of the Court? The husband is a younger and probably the stronger man of the two. How often can the elderly father come to help and interpose in such quarrels is a problem which it is not easy to determine. There is nothing in the decree to prevent the husband from insisting' on the performance of the decree and being guilty of violence in his wife's house at the same time. In my opinion if the husband is disentitled by reason of legal cruelty to an ordinary decree for the restitution of con-jugal rights directing the wife to live with him in his own house, he is not entitled to force himself into his wife's ' home in the manner provided by the decree, appealed. against. If he cannot be trusted to behave himself as a good husband and refrain from acts of cruelty in his own house he is not entitled to enjoy his conjugal rights in his wife's house, with no better guarantees for good behaviour; than perhaps ' the perpetual' chauladarship of his father-in-law; If the motive for all this cruelty is the desire to get at the wife's property, it will continue' to exist wherever the wife may be living. A decree like this will only serve to make both the wife and her father unhappy and may possibly lead to more serious'' quarrels between the husband and his father-in-law: What is there to guarantee that the wife's father will undertake to continue to live in the same house with him and to afford the wife the' protection which the decree thus intends to provide to her? Much as' I wish, like the learned Judge, to bring the husband and the wife to live together and fully appreciating as I do his desire to make reconciliation between them possible by thus bringing them together, I cannot help feeling that the intervention of the Court is not called for to help a callous husband to whose tender care the wife can be entrusted only under such extraordinary precautions. There has been no complaint of any kind whatsoever against the wife, or her conduct and

behaviour. She cannot under the Muhammadan Law; divorce the husband and re-marry. She can enjoy conjugal happiness, in his? society alone. Her only misfortune is, that she possesses property which her covetous hus-band wishes to dispose of at his own will and pleasure. His main object in the suit, as the Court below has found, is somehow or other to get her under his control so as to get a control over her property. This she will as, she is entitled to do, naturally resist. She cannot permit that upon what alone they may have to depend for their future living and maintenance to be frittered away by a thoughtless and reckless young husband. I think the danger and apprehension of cruelty and ill-treatment of the wife by the husband exists in about the same degree whether she lives at the husband's house or he at hers or more specially when the father worried, as he is likely to be, by constant quarrels with his son-in-law may feel himself unequal to hold to his post. The sooner the husband realizes that the way to his wife's love and confidence is by deserving it, the better it will be for their mutual happiness in life.

20. I think that the only safe course for the Court to follow at present is to refuse to grant to the plaintiff the relief he asks in this case. Unable as I am under the circumstances of the case to uphold the decree of the Court below, I still hope that the wife and her father will place no obstacles to the husband coming over to live with them as a matter, of mutual consent and conciliation and that the husband will be able to adopt a less selfish and a more considerate attitude towards his wife.

21. I dismiss the suit for the restitution of conjugal rights on the cause of action set forth in the plaint, but under the circumstances direct each party to bear his own costs of this litigation in all Courts.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**