

## **Mrs. Hazel May Murphy vs L.E. Murphy on 12 January, 1951**

**Equivalent citations: AIR1951ALL180, AIR 1951 ALLAHABAD 180**

### **JUDGMENT**

Mootham, J.

1. This is a petition under Section 17, Divorce Act for confirmation of a decree of the learned District Judge of Saharanpur dissolving the marriage of the petitioner with the respondent on the ground of the latter's adultery and desertion. The suit was not defended and there is no appearance for the respondent in this Court.

2. We have read the evidence recorded in the trial Court and are satisfied that the findings of the learned District Judge that the respondent has deserted the petitioner and committed adultery as is alleged in the petition are correct.

3. The parties were married at Rawalpindi in 1943 and it appears that it was there that they last resided together. Certainly there is no evidence that, the place where they last resided together was in this State. It is however not in dispute that both the petitioner and the respondent were residing, though not together, at Mussoorie at the time the petition was filed, and the question therefore arises whether the learned District Judge of Saharanpur had jurisdiction to hear this petition. The matter turns upon the proper interpretation of the words "where the husband and wife reside or last resided together" in Sub-section (1) (j)\*of Section 3, Divorce Act, and the question is whether the word "together" governs the word "reside" as well as the words "last resided". We are of opinion that the better construction is to restrict the operation of the word "together" to the immediately preceding words "last resided" for as was pointed out by Marten J. in *D. A. Borgonha v. W. C. Borgonha*, 44 Bom. 924 : (A. I. R. (7) 1920 Bom. 245):

" . . . one very cogent reason for not making the word 'together' govern the word 'reside' is that one can hardly imagine any case in which the husband and wife would be residing together at the date of the presentation of a divorce petition. For one thing to do so would almost inevitably raise the strongest suspicion of collusion or connivance, and lead to the petition being dismissed. For instance, a wife's petition must depend on adultery plus either desertion or cruelty. Obviously in no petition founded on desertion could the parties be living together at the date of the petition. And it is difficult to imagine any ease in which a wife who is charging her husband with adultery and cruelty, would still be residing with him."

That case has become the leading authority on the subject and has been followed, so far as we are aware, by all the High Courts in India which have had to consider this question. It was followed by a single Judge of this Court in the case of *Dora Ina Eates v. Eric Nevel Eates*, I. L. R. (1948) ALL. 112 :

(A. I. R. (36) 1949 ALL. 421) in which most of the earlier authorities are cited. Learned counsel has also drawn our attention to two other cases M. M. Robey v. A. V. Robey, A.I.R. (18) 1931 Cal. 121: (130 I. C. 240) and T. A. Kershaw v. A. C. Kershaw, A. I. R. (17) 1930 Lah. 916 : (12 Lah. 214) in which the same view has been taken by the Calcutta and Lahore High Courts. We are of opinion, therefore, that as both the petitioner and the respondent resided within the jurisdiction of the Court of the learned District Judge of Saharanpur at the date upon which the petition was filed that Court had jurisdiction to hear and determine the petition.

4. We accordingly confirm the decree of the learned District Judge.