

ALLAHABAD HIGH COURT

Fatima Begam

Vs

Sakina Begam

(Spankie, C.J.)

20.07.1875

JUDGMENT

Spankie, C.J.

1. In our view the lower appellate Court is in error, and Azim Khan's residence or dwelling within the meaning of those terms in Section 5, Act VIII of 1859, and Section 4. Act XXIII of 1861, is in the jurisdiction of the Farukhabad Civil Court.

2. The words dwelling or residence are synonymous with domicile or home, and mean that place where a person has his fixed permanent home, to which, whenever he is absent, he has the intention of returning. In Lord v. Colvin 4 Drew 366 : 28 L.J.Chanc. 361 it was held "that place is properly the domicile of the person in which he has voluntarily fixed the habitation of himself and family, not for a mere special and temporary purpose, but with a present intention of making it his permanent home unless and until something (which is unexpected or uncertain) shall occur to induce him to adopt some other permanent home." And in a case cited in Broughton's Civil Procedure Code, R. v. Murray (2 East P.C. 496), it was held that a man may have two dwelling-places, living sometimes at one and sometimes at another, and during his temporary absence each house though empty, if there be an animus rever-tendi, will still be his dwelling-house.

3. In the present case, Azim Khan, being a sawar in the Scinde Horse, his duties no doubt oblige his presence with his regiment for the greater part of his service, but the quarters of a regiment, always liable to be changed, are the temporary and not the permanent residence of the soldier; Azim Khan's family residence, admittedly within the jurisdiction of the Court, and the fixed and permanent home of his wife and family, and to which he has always the intention of returning, will constitute his dwelling-place within the meaning of the law.

4. We reverse the decree of the lower appellate Court and remand the case under Section 351, Act VIII of 1859, for trial of the appeal. Costs to follow the result.