

PC
6116-2

Judgment
33/1965

IN THE PRIVY COUNCIL

No.29 of 1964

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

UNIVERSITY OF LONDON
INSTITUTE OF LEGAL STUDIES
- 9 FEB 1966
25 Bedford Square
LONDON, W.C.1

80972

B E T W E E N:

PERUMBADU PIYASENA WICKRAMASURIYA
Appellant

- and -

SAMARASURIYA LIYANAARACHCHI SIRIMATHIE
RATNAVALI SAMARASURIYA
Respondent

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C A S E FOR THE APPELLANT

Record

1. This is an appeal from the order of the Supreme Court of Ceylon, dated the 27th day of June 1962, dismissing the appellant's appeal from the judgment and order of the District Judge, Gampaha, dated the 11th day of April 1960, whereby the marriage between the parties was dissolved on the grounds of the appellant's constructive malicious desertion.

p.224
pp.207-219

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2. The principal ground of appeal is that the allegations made by the respondent do not amount to constructive malicious desertion in Roman Dutch Law.

3. The parties were married in Colombo on the 31st day of January 1957 and the Respondent left the matrimonial home on the 10th day of October 1957 and has not returned. There is one child of the marriage namely Ravindra Rohan born on the 26th day of November 1957.

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4. The respondent filed plaint against the appellant on the 15th day of January 1958 praying for dissolution of the marriage, alimony, custody of the child and maintenance for the child, alleging gross cruelty which amounted to constructive desertion and in particular in an

pp.20-21

Record
pp.20-31

amended plaint alleged that the appellant treated her with cruelty in that he :-

p.30,1.7-23

- "(a) Refused to allow the plaintiff to visit her father during his illness in 1957;
- (b) Refused to stay with the plaintiff in her father's house at Gampaha during visits when occasion arose;
- (c) Frequently intercepted letters written to the plaintiff by her parents;
- (d) Prevented the plaintiff from visiting her friends and relations;
- (e) Neglected the plaintiff and failed to give her care during her pregnancy;
- (f) Refused to allow the plaintiff to go to her parents' house for her confinement;
- (g) Refused to arrange for the plaintiff to enter hospital for her confinement;
- (h) Refused to pay the plaintiff's lying-in expenses and hospital charges;
- (i) Insulated and humiliated the plaintiff in hospital shortly after child birth."

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pp.22-23

5. The appellant filed answer denying the alleged cruelty and cross-prayed for dissolution of the marriage and custody of the child on the grounds of the respondents desertion. The appellant also alleged that the amended plaint did not disclose a cause of action in law.

pp.31-32

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p.216,11.18-
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6. The case was heard on the 25th and the 26th days of May, 24th day of July, the 22nd and 23rd days of September, the 19th day of November 1959 and the 4th day of March 1960. On the 11th day of April 1960 the District Judge gave judgment in favour of the respondent and granted her the custody of the child. He further

granted her Rs.400/- a month as permanent alimony and Rs.200/- a month as maintenance for the child.

Record

7. The learned District Judge appeared to find that the appellant had harassed the respondent to ask her father to make over 40 acres of paddy field to him and further found on the allegations of cruelty as follows:

10 "(a) Refusing to allow the plaintiff to visit her father during illness in 1957. She said "I came to know that my father was ill and I wanted to go to Gampaha. When I asked the defendant for permission to go to Gampaha, he said that my father was a damn liar and a cheat and that he would not allow me to go home. He did not in fact allow me to go to Gampaha to see my father." That she was not allowed to go home is referred to in P2. In P3 plaintiff's father referred to his sickness, which was 20 a serious one. There is no indication in P3 that the plaintiff visited him during the sickness. It must have caused great mental agony to her, that she was not allowed to see her father, who has been so good to her, during a serious illness.

p.211,1.36 -
p.214,1.31

30 (b) There is evidence that on the few visits paid, on some occasions, the defendant did not stay in the plaintiff's house. This sort of conduct causes displeasure. The only reason was that the defendant was not given a field as dowry. Now it is apparent that there was no such promise. The promise existed in the dreams of the defendant, and he realised that it was only a dream, perhaps induced by his father, only on the last date of trial, when his Counsel stated in Court that it was due to a mistaken belief. This sort of hallucination that he must have everything the wife's parents have, regardless of their 40 other obligations, is not conducive to a happy married life. Who is to be blamed for this hallucination? He himself and nobody else. It is nothing to him but he has wrecked the life of his young innocent wife.

sic.

Record

(c) Frequently intercepting letters written to the plaintiff by her parents. There is ample evidence to show that the letters were intercepted by the defendant and his parents. It was after that the plaintiff's parents began to send letters under registered cover. At that time there was no intention to break the marriage and use these documents in a case. This precaution was taken to ensure the letters duly reached the person they were intended for.

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(d) Preventing the plaintiff from visiting her friends and relations. For instance she was not taken to her cousin Kamala's wedding. Of course, once a request is refused, she would not be repeating similar requests. This does not mean she was not taken out, but not to places and persons she liked to visit. Her life was almost the life of a prisoner.

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(e) Neglecting the plaintiff and failing to give her care during pregnancy.

Her diet was a monotonous one and she had no choice. It does not appear that the defendant had informed her before the marriage that he was a pure vegetarian and the household did not eat meat at all. She was not given milk or meat. Only on a few occasions eggs have been brought from elsewhere. Defendant's father who had cows, after she became pregnant, sold them. She was not given proper medical care. Her case is one of studied neglect and in such a case certain things are done to give a different appearance. Once a female conceives she is advised to rest, especially during the first pregnancy to avoid a miscarriage. Such a person is not hurried here and there. She had to climb the stairs daily. She was taken to funerals and to long distances. Once she was examined by Dr. Caldera in Colombo. Dr. Caldera informed her that the position of the child was bad

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and advised her to rest and go back to Matara on the following day. Against this advice she was taken to Matara by the defendant on the same day. On arrival at Matara she was feeling very tired and sleepy. Surely these acts could not have been done with good intent. She had to wait on many days for her lunch till 2 p.m. The plaintiff states in the letter P4 "Oh - Mama, save me from these heartless, inconsiderate and cruel people and take me away. In a letter Papa sent to P.P. he had asked P.P. to look after me and the child in my womb. Repeating these words he ridicules me. O, Mama, take me home somehow or other."

(f) The defendant admitted that he did not give his consent to the plaintiff to go to her parents' house for the confinement. As a matter of fact, he claims a dissolution on the ground that she maliciously deserted him by doing so. One might understand, when a female marries a man, she does not become his slave. The contracting parties after the marriage, though their functions and duties are different, have equal rights, though for the purpose of the maintenance of the union, the husband generally being the older person, has a greater voice in the household affairs. In certain matters wife must obey: but the husband has no right to refuse a reasonable request of the wife. Can one say that her request to go to her parents' house for the first confinement is unreasonable? The husband has been unkind, ungenerous and even inimical towards her. Her life was in danger and she may not have survived to unfold her tale of woes if she remained in the defendant's house at Matara for the confinement. The defendant has acted cruelly in refusing to grant her permission.

(g,h,i) The females of a certain status enter Private Nursing Homes for confinements. Arrangements are made before-hand. The defendant had not made any such arrangement. On a visit to Colombo, he may have gone to a Nursing Home, but an arrangement, in fact, has not been made. A mere show of an arrangement is not sufficient. In the case of a person studiedly neglecting his wife, he may do what

Record

the defendant has done. The defendant had not paid the lying-in-expenses. When it comes to a payment or incurring an expense, he becomes very dense to his obligations. Though he appropriated the cash dowry of Rs.30,000/- provided by the plaintiff's father the only present given to her after the marriage was a saree of the value of Rs.10/- or Rs.12/-. When the plaintiff asked for money from him at the hospital he offered Rs.2/-, which was not accepted by her. Then he created a scene at the hospital and sent a Constable with a message. If he was genuinely fond of his wife and was wanting her, that was not the correct method of approach. When he sent the Constable, not that he wanted his wife but he wanted to have evidence. He is only anxious to have a divorce, but he did not offer to return the dowry of Rs.30,000/-. He wanted a divorce himself - that is he did not want her; but he wanted to have with him the dowry.

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I shall now deal with the matters raised in issue, No. 14. It is the duty of the husband to provide a home for both of them. By going to his parents' house she accepted that house as their matrimonial home for the moment. She did not know his parents before. But she found life was intolerable. She requested the defendant to live in a separate house. At first he agreed but later he withdrew from that position. Correspondence shows, she was willing till a very late stage to patch up differences and live with him. If the defendant's parents were the most objectionable characters, naturally she would have liked to live apart and made a proposal to her husband. When it comes to a question of spending on her he has no money. He contested a Parliamentary Seat in 1956 and then in 1960. Both occasions he lost. He spent at the rate of Rs.315/- as expenses for each day for himself in this case, but paid her only Rs.100/- for all her expenses.

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It was impossible for her to live in that house. She was called a "Pissi" or a "Goni". Her dress was criticised by the defendant's mother. She was compared to prostitutes. Some meneriya and polpala, which are commonly taken by expecting mothers, sent by her mother, she was not allowed to get them prepared.

Record

10 Why have the defendant and his parents behaved in this awful manner? The best judge of a man's character is his wife, because she knows his innermost thoughts. If opinions and views were formed, at a time while they were living together and without any idea of obtaining a divorce, such opinions and views may be fair. In P2 and P4 she says "they have savage ways, they lack good breeding, no wonder they are called Polongas, defendant talks like a cheetah, desiring to get the paddy field, though they have money they are stingy, they usurp others' property" and so on. 20 Who will dare to say these views and opinions expressed by her are not a fair and just estimate of their character?"

8. The learned District Judge also found "on all material facts, I accept the evidence of the plaintiff and her parents and reject the evidence of the defendant when he contradicts them".

p.215,11.38-40

30 9. The appellant appealed to the Supreme Court on the following among other grounds.

pp.219-223

"(a) That the said Judgment is contrary to law and against the weight of evidence adduced in this case.

p.221,11.11-21

40 (b) It is submitted that even if the allegations made in paragraph (6A) of the amended plaint are true, the conduct of the defendant does not in law amount to constructive malicious desertion. Such evidence can only prove indifference on the part of a husband towards his wife and does not in law justify her refusal to live with him. The desertion, it is therefore submitted, was on the part of the plaintiff who without lawful justification left the defendant and returned to her parents."

Record
p.224

10. On the 27th day of June 1962 the Supreme Court dismissed the appeal without any recorded judgment.

pp.230-231

11. Final Leave to appeal to Her Majesty-in-Council was given by the Supreme Court of Ceylon on the 19th day of October 1962.

12. The appellant respectfully submits that this appeal should be allowed and the judgment of the Supreme Court set aside and an order made granting a dissolution of the marriage on the grounds of the respondent's desertion, and granting him the custody of the child and the costs of the proceedings for the following among other

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R E A S O N S

- (1) BECAUSE the particulars of cruelty set out in the plaint and given in evidence do not in law amount to constructive malicious desertion;
- (2) BECAUSE the learned District Judge failed to consider the evidence given on behalf of the appellant;
- (3) BECAUSE the learned District Judge misdirected himself as to the evidence.

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E.F.N. GRATIAEN

THOMAS O. KELLOCK

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C A S E FOR THE APPELLANT

Lodged the *26th* March 1965

A. L. BRYDEN & WILLIAMS,
20 Old Queen Street,
London, S.W.1.

Solicitors and Agents for the
Appellant.