~~P.C.~~
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Judgment
33/1965

No. 29 of 1964

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF CEYLON

BETWEEN :

PERUMBADU PIYASENA WICKRAMASURIYA
of MEDDEWATTA, MATARA — Appellant

and

SAMARASURIYA LIYANAARACHCHI
SIRIMATHIE RATNAVALI SAMARASURIYA
of MEDAGAMA, GAMPAHA — Respondent

CASE FOR THE RESPONDENT

RECORD

1. This is an appeal by Leave of the Supreme Court of the Island of Ceylon given on the 19th October, 1962 from the Judgment and Order of the Supreme Court of the Island of Ceylon dated the 27th June, 1962 dismissing an appeal by the Appellant from a Judgment of the District Court of Gampaha dated the 11th April 1960 whereby, in a suit by the Respondent against the Appellant for dissolution of marriage on the grounds of constructive malicious desertion and gross cruelty and for certain ancillary relief a decree nisi of dissolution of marriage was granted to the Respondent on the grounds of constructive malicious desertion, the custody of the child of the marriage was granted to the Respondent and the Appellant was ordered to pay to the Respondent Rs. 400/- per month as permanent alimony and Rs. 200/- per month as maintenance for the child.

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2. The main question in this appeal is whether upon the facts found by the District Court a

finding of constructive malicious desertion was properly made and if not whether the Appellant was entitled upon his Answer to a decree nisi of dissolution on the grounds of the Respondent's malicious desertion.

p. 29 3. In her amended plaint dated the 17th April, 1959 the Respondent, inter alia, stated:-

(a) That the parties were married on the 31st January, 1957 in Colombo.

(b) That after the marriage they lived at Matara with and in the house of the Appellant's parents.

(c) That from a few days after the marriage the Appellant and his parents continuously harassed the Respondent stating that the dowry given was not enough, although to the Respondent's knowledge there was no talk of dowry before the marriage.

(d) That in June, 1957 the Appellant brought the Respondent to Gampaha and sent her to her parents to ask her father to transfer the forty acres of paddy land belonging to him to the Appellant and Respondent.

(e) That as the Respondent failed to get the said transfer the Appellant and his parents started insulting and humiliating the Respondent and threatening her with gross cruelty. Which conduct amounted to constructuve malicious desertion.

(f) That in paragraph 6a of the Amended Plaint the Respondent gave particulars of the cruelty alleged.

(g) That as the Respondent was cruelly treated and neglected she left for her parents house on the 10th October, 1957.

The Respondent prayed for dissolution of the marriage on the grounds of constructive malicious desertion and gross cruelty, for custody of the child of the marriage Ravindra Roham born on the 26th November, 1957, for alimony in a sum of Rs. 400/- per month, for maintenance for the child in the sum of Rs. 250/- per month and for costs.

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4. By his Amended Answer dated the 28th April 1959 the Appellant denied the charges made against him, alleged that the amounts of alimony and maintenance claimed were excessive and stated that in any event the amended plaint did not disclose a cause of action in law against him. The Appellant further alleged that the Respondent left him on the 10th October, 1957 against his wishes and prayed for dissolution of the marriage on the grounds of malicious desertion, for custody of the child and costs. P. 31

5. The Action was heard by the District Judge of Gampaha on the 25th and 26th May, the 24th and 27th July, the 22nd, 23rd and 24th September, the 6th and 19th November, all of 1959, and the 4th March, 1960. p. 53

6. On the 11th April, 1960 the District Judge of Gampaha delivered Judgment and decreed that the marriage be dissolved by reason of the Appellant's constructive malicious desertion, unless sufficient cause be shown to the Court why the decree should not be made absolute within a period of three months from the making thereof. The District Judge granted the custody of the child to the Respondent and ordered the Appellant to pay to the Respondent Rs. 400/- per month as permanent alimony and Rs. 200/- per month as maintenance for the child. The District Judge also made certain orders in respect of the Respondent's costs. p. 207

7. On all material facts the District Judge in his judgment accepted the evidence of the Respondent and her parents and rejected the evidence of the Appellant when it contradicted their evidence. p. 215

8. The District Judge answered the fifteen issues framed by the parties in the following way. p. 52 p. 87 and p. 216

(1) Did the Appellant in June, 1957 send the Respondent to her father at Gampaha to ask him to transfer to the Appellant and the Respondent forty acres of paddy land belonging to the Respondent's father? . . . . . Yes.

(2) As the Respondent failed to obtain a transfer of the said paddy land, did the Appellant and his parents insult and humiliate the Respondent and treat her with cruelty? . . . . . Yes, even before.

(3) Did the Appellant treat the Respondent with cruelty as alleged in paragraph 6a of the Plaint? . . . . . Yes.

(4) If issue (2) and/or (3) is answered in the affirmative, is the Appellant guilty of constructive malicious desertion? . . . Yes.

(5) Did the Respondent leave the Appellant for her parents' home on 10th October, 1957, as a result of the Appellant's conduct alleged in issue (2) and/or (3)? . . . . . Yes.

(6) If so, is the Appellant guilty of constructive malicious desertion? . . . . . Yes.

(7) If the Respondent is granted a divorce to what amount of permanent alimony per month is she entitled from the Appellant? . Rs. 400/- per month.

(8) Should the custody of the child Ravindra Roham be granted to the Respondent or the Appellant? . . . . . To the Respondent.

(9) If the custody of the child is granted to the Respondent what monthly sum should be Appellant pay to the Respondent as maintenance for the child? . . . . . Rs. 200/- per month.

(10) Did the Respondent maliciously desert the Appellant on 10th October, 1957 as averred in paragraph 5 of the Answer? . . . . . No, definitely her life was in great danger and her parents had to rescue her.

(11) If so, is the Appellant entitled to a dissolution of the marriage on the grounds of malicious desertion by the Respondent? Does not arise.

(12) Is the Appellant entitled to custody of the child? . . . . . No.

(13) Does the plaint disclose a cause of action for a dissolution of her marriage? . . . Yes.

(14) Did the Appellant fail to provide a home where the Respondent could reasonably live? Yes.

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(15) If so, is the Appellant guilty of constructive malicious desertion? . . . . . Yes.

9. On the 19th April, 1960 the Appellant appealed to the Supreme Court of the Island of Ceylon against the Judgment of the District Court. p. 219

10. On the 14th June, 1962 the said Appeal was heard by the Hon. Hema Henry Basnayake Q.C. Chief Justice and the Honourable Asoka Windra Hemantha Abeyesundere Q.C. Puisne Justice of the Court when it was dismissed with costs. p. 224

11. On the 27th June, 1962 Application was made to the Supreme Court of the Island of Ceylon by the Appellant for conditional leave to Appeal to the Privy Council. Conditional leave was granted on the 7th September, 1962 upon certain conditions. On the 19th October, 1962 Final Leave to Appeal to the Privy Council was granted to the Appellant. p. 225 p. 227 p. 230

12. It is submitted that the findings of fact made by the District Judge of Gampaha were correct and were supported by the evidence, that such findings of fact amply supported a finding that the Appellant was guilty of constructive malicious desertion and also the orders in respect of custody of the child, alimony and maintenance.

13. The Respondent accordingly humbly submits that the said Judgment of the District Court of Gampaha is correct and that this Appeal should be dismissed for the following among other:-

R E A S O N S

(1) BECAUSE there was evidence upon which the District Judge could properly find the facts as he did.

(2) BECAUSE on all material facts the District Judge accepted the evidence of the Respondent and her parents and rejected the evidence of the Appellant when it contradicted their evidence.

(3) BECAUSE the facts as found by the District Judge constituted constructive malicious desertion by the Appellant.

(4) BECAUSE in awarding the custody of the child to the Respondent the District Judge properly considered the paramount interest of the child.

(5) BECAUSE the orders made by the District Judge for permanent alimony for the Respondent and for maintenance for the child were proper and reasonable upon the facts found by the District Judge.

(6) BECAUSE of the reasons given in the Judgment of the District Judge.

MURRAY BAND.

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BETWEEN:

PERUMBADU PIYASENA WICKRAMASURITA — Appellant

and

SAMARASURIYA LIYANAARACHCHI SIRIMATHIE RATNAVALI SAMARASURIYA — Respondent

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CASE FOR THE RESPONDENT

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