

## Peiris v. Peiris

COURT OF APPEAL

SOZA, J. AND RANASINGHE, J.

CA (S.C.) APPLICATION NO. 802/77—D.C. COLOMBO D/2203/SPL.

SEPTEMBER 26, 1973.

*Administration of Justice (Amendment) Law, No. 25 of 1975, sections 26, 626 (1), 670—Action for declaration of nullity of marriage—Whether limited to grounds set out in the Marriage Registration Ordinance—Procedural and not substantive law—Roman Dutch Law relating to nullity still applicable—Civil Procedure Code, section 607 (2)—Civil Procedure (Special Provisions) Law, No. 19 of 1977, sections 4 (1), 5 (1)—Applicability of Civil Procedure Code to pending actions after amending Law No. 19 of 1977.*

The plain.iff filed action in the District Court seeking a decree declaring her marriage with the defendant null and void on the grounds of lack of consent and duress. The defendant did not file answer and the trial was held *ex-parte*. After trial the learned District Judge dismissed the action holding *inter alia*, that the grounds on which nullity of marriage were being sought did not fall with those set out in the Marriage Registration Ordinance as contemplated by section 626 (1) of the Administration of Justice (Amendment) Law, No. 25 of 1975.

#### Held

(1) That when section 626(1) of the Administration of Justice Law empowered the District Court to enter a decree of nullity of marriage on any ground set out in the Marriage Registration Ordinance, this did not expressly exclude the other grounds recognized by the Roman Dutch Law as being adequate to found a suit for nullity of marriage. The Court could still exercise its matrimonial jurisdiction in its fullest amplitude although the procedural provisions in regard to the grounds of nullity, unlike the wide language of section 607(2) of the Civil Procedure Code, covered only those set out in the Marriage Registration Ordinance.

(2) That in any event after the coming into force of the Civil Procedure (Special Provisions) Law, No. 19 of 1977, the matter could be dealt with on the basis that section 607 of the Civil Procedure Code was operative at the date of trial inasmuch as section 4(1) of this Law enacted that the Civil Procedure Code shall be deemed to be and to have been in operation as if the same had not been repealed, and section 5(1) stated *inter alia*, that every action, pending in any civil Court on the day immediately preceding 29th November, 1977, shall be continued and proceeded with to final judgment as if such action had been instituted under the provisions of the Civil Procedure Code.

#### Cases referred to

(1) *Gunatilleke v. Millie Nona*, (1937) 38 N.L.R. 291.

APPLICATION in revision from the District Court, Colombo.

N. S. A. Goonetilleke, for the petitioner.

No appearance for the respondent.

*Cur. adv. vult.*

October 03, 1978.

**SOZA, J.**

This is a suit where the plaintiff seeks a decree declaring her marriage with the defendant null and void. She has founded her suit on two main grounds, namely, lack of consent and duress. The defendant did not file answer and the case went to trial *ex parte*. The learned District Judge dismissed this action holding against the plaintiff on the question of consent and also that the grounds on which nullity of marriage was being sought did not fall within those set out in the Marriage Registration Ordinance.

On 19th August, 1977, when the learned District Judge made his order the Administration of Justice (Amendment) Law, No. 25 of 1975, was in force. In regard to suits for declaration of nullity of marriage there was action 626 of this law. Subsection (1) of this section provided as follows:

"A marriage may be dissolved or declared null and void if the Court is satisfied that any of the grounds for dissolution or nullity set out in the Marriage Registration Ordinance has been proved to exist."

In terms of this section a declaration of nullity of marriage could be sought on such grounds as are set out in the Marriage Registration Ordinance. Under this Ordinance the provisions empowering a Court to pronounce on the validity of a marriage are—

- (i) Section 15, where either party to the marriage is below the prescribed age ;
- (ii) Section 16, where the parties to the marriage are within the prohibited degrees of relationship ;
- (iii) Section 18, where either of the parties has contracted a prior marriage not yet legally dissolved or declared void ;
- (iv) Section 46, where the parties knowingly and wilfully intermarry under the provisions of the Ordinance in any place other than that prescribed by the Ordinance or under a false name or names, or except in cases of death-bed marriages under section 40, without certificate of notice duly issued, or knowingly or wilfully consent to or acquiesce in the solemnization of the marriage by a person who is not authorized to solemnize the marriage.

Prior to the enactment of the Administration of Justice (Amendment) Law, No. 25 of 1975, section 607 (2) of the Civil Procedure Code provided that a decree of nullity could be made "on any ground which renders the marriage contract between the parties void by the law applicable in Ceylon". The law applicable to this question was the Roman Dutch Law—see, for instance, the case of *Gunatilleke v. Millie Nona* (1).

The Administration of Justice (Amendment) Law, No. 25 of 1975, it must be remembered, enacted procedure and not substantive Law. Section 626(1) empowers the District Court to enter a decree of nullity of marriage on any ground set out in the Marriage Registration Ordinance. But this sub-section does not expressly exclude the other grounds recognised by the Roman Dutch Law as being adequate to found a suit for nullity of marriage. Further, section 26 of the Administration of Justice Law, No. 44 of 1973, confers on the appropriate District Court jurisdiction in all matrimonial matters. An action for nullity of marriage is a matrimonial matter—see the definition given in section 674 of the Administration of Justice (Amendment) Law, No. 25 of 1975. The District Court is thus empowered to administer the entire matrimonial law of the land and this includes the

Roman Dutch Law relating to nullity of marriage. Although section 626(1) of the Administration of Justice (Amendment) Law makes no procedural provisions in regard to grounds of nullity other than those set out in the Marriage Registration Ordinance, still this will not hamstring the Court from exercising its matrimonial jurisdiction in its fullest amplitude. The law will not fail for want of a procedure. Section 670 of the Administration of Justice (Amendment) Law saves the inherent powers of the Court to make such orders as may be necessary for the ends of justice. We are of the view that the provisions of section 626 (1) of this law do not exclude the Roman Dutch Law relating to nullity of marriage despite the absence of the wide language of section 607 of the Civil Procedure Code and of specific procedural provisions.

Today however, the matter will have to be viewed from the angle that the Civil Procedure Code (by the Civil Procedure (Special Provisions) Law, No. 19 of 1977) is deemed never to have been repealed. Section 4(1) of this law states that the provisions of the Civil Procedure Code shall for all purposes be deemed to be and to have been in operation as if the same had not been repealed and continue to be the law governing the procedure and practice in civil courts. Section 5 (1) of this law states that every action, application or other matter pending in any civil court, original or appellate, on the day immediately preceding the appointed date (29th November, 1977) shall be continued and proceeded with to final judgment, completion and execution as if such action, application or other matter had been instituted or made under the provisions of the Civil Procedure Code. Under these provisions therefore we can deal with this matter on the basis that section 607 of the Civil Procedure Code was operative at the date of the trial. By this section a decree for nullity of marriage can be pronounced on any ground which renders a marriage contract between parties void by the law applicable in Ceylon. Under the Roman Dutch Law which is applicable to this question duress, mistake, fraud and immaturity are grounds on which nullity of marriage can be sought—see Lee: Roman Dutch Law, 5th Edition page 93.

The learned District Judge did not proceed to consider the ground of duress because he felt himself bound by his interpretation of provisions of section 626 of the Administration of Justice (Amendment) Law, No. 25 of 1975. On the evidence that has been led we are of opinion that the plaintiff is entitled to a *decree nisi* in her favour. We therefore set aside the judgement and decree of the learned District Judge dated 19th August, 1977

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and send the case back for the learned District Judge to enter *decree nisi* in favour of the plaintiff and to take necessary steps thereafter.

**RANASINGHE, J.**—I agree

*Application allowed.*

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