

1931

Present: Macdonell C.J.

SILVA v. SENERATNE.

447—P. C. Matara, 50,091.

Maintenance—Claim by wife—Sufficient means to support herself—No right to maintenance.

A married woman, who is possessed of sufficient means for her support, is not entitled to claim maintenance from her husband under the Maintenance Ordinance.

APPEAL from an order of the Police Magistrate of Matara.

R. L. Bartholomeusz, for defendant, appellant.

Wijewickreme, for applicant, respondent.

August 6, 1931. MACDONELL C.J.—

In this case the applicant sued respondent, her husband, for maintenance. The husband admits that he manages properties for his mother but alleges that he receives no salary for doing so and lives entirely on his mother's charity. The learned Magistrate rejected this story and I think rightly. The evidence was that respondent is the only one of his family available to manage these properties for his mother. If, therefore, his mother dismissed him from the management of them, she would have to engage someone else to manage them and would have to pay that someone a regular wage for such services. Then, she is not in a position to dismiss respondent from that management while he is in a position to demand remuneration for managing those estates which one has no doubt he gets. The Magistrate's finding that respondent has means of paying the Rs. 10 per mensem that he has been ordered to pay, is thus clearly correct.

The Magistrate has ordered respondent to pay Rs. 5 per mensem for maintenance of his wife and Rs. 5 per mensem for that of his children. As these children are admittedly not of an age to maintain themselves, see Ordinance No. 19 of 1889, section 3, the order with regard to them will clearly stand and one might almost regret that the Magistrate had not made a larger order for their benefit. But as to the order of Rs. 5 per mensem for the maintenance of the wife there is this difficulty. She admits she is possessed of property on the income of which she is "living comfortably". Then on her own showing it is not easy to see that she has a claim to maintenance. The case reported in *Ramanathan's Reports*

¹ (1929) 30 N. L. R. 410.

(1863-68), p. 141, assumes as its *ratio decidendi* that, if the wife is otherwise provided for, she cannot have a claim against her husband for maintenance in Police Court proceedings. Ordinance No. 19 of 1889 is silent on the point, and no other Ceylon case on the point has been cited to me. Such English authorities as I have been able to discover are, however, to a similar effect as the case cited above from *Ramanathan*. What is the reason for allowing proceedings by a wife against a husband for maintenance? Obviously, lest the wife become a public charge. But as long as she has money of her own for her support this cannot happen. With considerable regret, then, I fear it is my duty to set aside the learned Magistrate's order for payment of Rs. 5 per mensem as maintenance for the wife.

The respondent husband has instituted an action of divorce against the applicant, alleging adultery, and is trying to get leave to sue in *forma pauperis*. But in the present proceedings he has not pleaded adultery by the wife as a defence. Then, in all probability, his action for divorce is not *bona fide*, as the Magistrate is inclined to hold. This fact distinguishes this case from that in 7 *Ceylon Law Recorder*, p. 58, cited to me, wherein a wife's application for maintenance to which the husband had pleaded her adultery as a defence, was ordered to be stayed pending the decision of his own suit for divorce also alleging adultery.

The appeal must be dismissed as regards the Rs. 5 per mensem ordered to be paid as maintenance for the children, and allowed as regards the Rs. 5 per mensem ordered to be paid as maintenance to the wife.

Order varied.
