

1973

Present : G. P. A. Silva, S.P.J.

S. RAJASINGHE, Appellant, and A. A. BANDARA, Respondent

S. C. 474/70—M. C. Kandy, 59489

*Jurisdiction—Application for maintenance—Right of applicant to make such application before a Magistrate's Court anywhere—Maintenance Ordinance (Cap. 91), s. 11.*

The Maintenance Ordinance leaves it open to an applicant to file an application for maintenance before any Magistrate's Court. There is no obligation on the applicant to go to a Court where the defendant resides or where the cause of action arose.

**A**PPEAL from an order of the Magistrate's Court, Kandy.

*L. D. Guruswamy*, for the applicant-appellant.

No appearance for the defendant-respondent.

March 1, 1973. G. P. A. SILVA, S.P.J.—

This is an appeal from an order made by the Magistrate in a maintenance case holding that he had no jurisdiction to hear and determine this case as the applicant resided in a place within the exclusive jurisdiction of the Magistrate's Court of Panwila, whereas this application was filed before the Magistrate's Court of Kandy. The circumstances in which he came to make this order were these :—The applicant-appellant filed the application for maintenance against the defendant-respondent in the Magistrate's Court of Kandy, on 16th June, 1968 claiming maintenance for herself and her five children. The defendant on 21.8.68 admitted the paternity of the first three children and denied paternity of the last two children alleging adultery against the applicant. No objection was taken to the jurisdiction of the Court and the Magistrate ordered him to pay maintenance for the children whose paternity he admitted. After several postponements the inquiry in respect of the application for maintenance for the other two children was taken up on 28.6.69 and some subsequent dates and the entirety of the evidence of the defendant was concluded as the burden of proof was on him in this case. Thereafter the applicant gave evidence and was fully cross-examined. At this stage when the case was presumably closed the proctor for the respondent stated that the Court had no jurisdiction to entertain the application and to hear the case as the cause of action, namely, the failure to maintain the

children and the residence of both parties arose outside the jurisdiction of the Magistrate's Court of Kandy. The learned Magistrate allowed a date for the argument of this matter and on that date ruled in favour of the defendant on the question of jurisdiction raised by him.

It seems to me that the learned Magistrate was in error in so holding. The Maintenance Ordinance is silent in regard to the question of jurisdiction for filing an application and any Magistrate will have jurisdiction to entertain and inquire into an application filed before him. It may be for very good reason that the Ordinance left it open to an applicant to file an application before any Magistrate. For, a party filing an application for maintenance will, apart from other reasons, be ordinarily in somewhat straitened circumstances and it might well have been the intention of the legislature not to impose on such a party the obligation to go to a Court where the defendant resided or where the cause of action arose which might entail heavy expenditure to the applicant. Section 11 of the Maintenance Ordinance also appears to give strength to the conclusion that the application for maintenance can be filed before any Magistrate, but insofar as the enforcement is concerned, only the Magistrate within whose jurisdiction the person against whom an order for maintenance is made is found, is empowered to issue a warrant and if necessary to pass a sentence in terms of Section 8.

Counsel for the appellant has referred me to two decisions of this Court one of which was by a Divisional Bench, namely 63 N.L.R. page 544, which would appear to confirm the view that an application for maintenance could be brought before any Magistrate's Court. In the circumstances I hold that the Magistrate was in error in deciding in favour of the objection to jurisdiction, even if the decision was based on the provisions of the Maintenance Ordinance alone. But that is not all. Section 71 of the Courts Ordinance states :

“Whenever any defendant or accused party shall have pleaded in any cause, suit, or action, or in any prosecution brought in any District Court, without pleading to the jurisdiction of such District Court, neither party shall be afterwards entitled to object to the jurisdiction of such court, but such court shall be taken and held to have jurisdiction over such cause, suit, action, or prosecution : ”

Although it does not cover the jurisdiction in regard to a case instituted in a Magistrate Court, the principle embodied in this section is that if an objection is to be raised to the jurisdiction of a Court, particularly, local jurisdiction, it has to be raised at the commencement of a trial and not thereafter. The proceedings

in the present application show that the defendant waived any objection to jurisdiction which he may have taken and acquiesced in the application being dealt with in the Magistrate's Court in which it was brought. As a matter of fact he consented to an order made by the Magistrate for the payment of maintenance to three children and the application was proceeded with only in respect of the other two children whose paternity was denied by the defendant. It is therefore clear that the objection to jurisdiction was taken as a last resort at an inappropriate stage, after having first accepted the jurisdiction of a Magistrate's Court before which the application was made.

For the above reasons, I set aside the order of the Magistrate and as no order has been made in regard to the facts of the case, there is no alternative but to send the case back for a finding on the facts as disclosed in the evidence. All the evidence had been led before the Magistrate who made the order complained of and, as I am informed by counsel from the bar that this Magistrate is no longer functioning in the Magistrate's Court, Kandy, I make order that the case be heard afresh on the basis that the Magistrate's Court, Kandy has jurisdiction to entertain the application made by the applicant. The present Magistrate will no doubt give high priority to this case, considering the fact that it has been filed as far back as June, 1968, and hear and determine the case as early as possible.

*Order set aside.*

