

1966 *Present : Sri Skanda Rajah, J., and Alles, J.*

E. M. DAYAWATHIE, Appellant, *and* W. A. GUNARATNE,
Respondent

S. C. 581/1964—D. C. Kurunegala, 1656/D

Marriage of a minor—Registration without father's consent—Subsequent action for declaration that the marriage was invalid—Not maintainable—Marriage Registration Ordinance (Cap. 112), ss. 42, 46.

A wife, who was 18 years old at the time of her marriage, which was registered, sued her husband subsequently praying for a declaration that the marriage was null and void on the ground that her father's consent to the marriage had not been obtained.

Held, that sections 42 and 46 of the Marriage Registration Ordinance (Cap. 112) debarred the marriage from being declared invalid.

APPEAL from a judgment of the District Court, Kurunegala.

W. D. Gunasekera, with *W. S. Weerasooria*, for Plaintiff-Appellant.

T. B. Dissanayake, for Defendant-Respondent.

February 9, 1966. SRI SKANDA RAJAH, J.—

The marriage between the Plaintiff-Appellant, who was 18 years and 2 months old, and the defendant-respondent was registered on 23.8.1963.

This action was filed praying for a declaration that the marriage was null and void on the ground that it was contracted without the consent of her father, the next-friend.

The relevant provision in the Marriage Registration Ordinance, Cap. 112, is section 42, which enacts :—

“ After any marriage shall have been registered under this Ordinance it shall not be necessary in support of such marriage to give proof..... of the consent to any marriage having been given by any person whose consent thereto was required by any law..... *nor shall any evidence be given to prove the contrary in any suit or legal proceedings touching the validity of such marriage* ”

The portion italicized above speaks for itself. If evidence regarding want of consent is shut out by Statute, then it necessarily follows that the marriage cannot be declared invalid on that score.

Want of the requisite consent is not one of the circumstances mentioned in section 46 which sets out the circumstances in which a marriage will be null and void.

In *Selvaratnam et al. v. Anandavelu*¹ de Kretser, J. pointed out, “ Where the provisions of the Ordinance have been flagrantly flouted, section 42 (new section 46) declared such marriage null and void. Want of consent was not so drastically treated.” I would respectfully adopt this dictum.

For these reasons, I would dismiss the appeal without costs.

ALLES, J.—I agree.

Appeal dismissed.

