

1970 Present : Samerawickrame, J., and Weeramantry, J.

H. B. RATNAYAKE, Appellant, and M. RATNAWATHIE and others, Respondents

S.C. 4/67—D. C. Anuradhapura, B/448 (Special)

Registration of births—Illegitimate child—Entry in respect of his birth—Rectification by insertion of the name of the child's father—Permissibility—Interpretation of statutes—Maxim that general words have sometimes to be given a restricted meaning—Births and Deaths Registration Act (Cap. 110), ss. 21 (2) (3), 28 (1) (a), 28 (1) (c), 28 (3).

The provisions of Section 28 of the Births and Deaths Registration Act do not empower the Court to make an order adjudicating on an issue as to the disputed paternity of an illegitimate child. In interpreting the Section the maxim that general words in a statute have sometimes to be given a restricted meaning is applicable.

APPEAL from a judgment of the District Court, Anuradhapura.

F. R. Dias Bandaranaike, for the 3rd respondent-appellant.

No appearance for the petitioner-respondent.

Shiva Pasupati, Crown Counsel, as *amicus curiæ*.

Cur. adv. vult.

July 26, 1970. SAMERAWICKRAME, J.—

The petitioner made this application under Section 28 of the Births and Deaths Registration Act, No. 17 of 1951, to have an entry in respect of her illegitimate child Ranmenika rectified by the insertion of the name of the 3rd respondent-appellant as the father. The 3rd respondent-appellant denied paternity. After an inquiry, the learned District Judge made order directing the birth registration entry to be amended as prayed for by the petitioner. The 3rd respondent has appealed from that order.

Learned counsel for the appellant submitted that an application under s. 28 of the Births and Deaths Registration Act did not lie where there is a disputed question of paternity of an illegitimate child.

Section 21 (2) of the Act prohibits a registrar from entering in the register the name of any person as the father of an illegitimate child except at the joint request of the mother and of the person acknowledging himself as the father of the child and unless such person signs the register together with the mother ; or except on an order of a competent court.

Where no name has been entered at the time of the registration of the birth, subsection (3) provides :—

“ Except upon an order of a competent court, no person shall, after the original registration of the birth of an illegitimate child, enter in the register of births the name of any person as the father of such child.”

This provision refers to an order of a competent court and not to an order obtained under the provisions of the Act. Its terms therefore do not preclude an order authorising an entry being made by a competent court in proceedings other than those had under the Act. The application is made in terms of s. 28 and the relevant provisions are ss. 28 (1) (c) and 28 (3) which are as follows :—

“ 28 (1) (c). A person whose birth has been registered (whether under this Act or under any past enactment), or his parent or guardian, or a person aggrieved by any particulars in the entry relating to that birth, may make a written application to the District Court of the district in which the birth occurred for an order directing—

the insertion of the name of the father of such person, in any case where such name was omitted at the time of the original entry ;

28 (3). On an application to the District Court, in accordance with the preceding provisions of this section, for the amendment of an entry in a register of births, the District Court may, after due notice to the Registrar-General, the appropriate registrar, and such other parties and persons as the court may think fit, and after due inquiry, make such order, whether in terms of the application or otherwise, as justice of the case may require.”

It will be seen that (a) apart from the Registrar-General and the appropriate registrar, notice is to be given to such other parties and persons as the court thinks fit ; (b) the court is required to make due inquiry, but the mode or manner of such inquiry is left entirely to it ; and (c) the court has to make such order whether in terms of the application or otherwise as justice of the case may require. The procedure prescribed is very summary and hardly suited for the determination of the important and often difficult question of the paternity of an illegitimate child which is disputed. A disputed matter of paternity is appropriately to be determined in a properly constituted action. This was the view of Dalton, S.P.J. in *Samynathan v. Registrar-General*.¹

It is true that in maintenance proceedings questions of paternity are decided in summary proceedings but the Maintenance Ordinance provides certain safeguards. An application in respect of an illegitimate child will not be entertained unless it is made within 12 months from the birth of the child, or unless it be proved that the man alleged to be the father has at any time within 12 months next after the birth maintained the

¹ (1936) 37 N. L. R. 289 at 291.

child or paid money for its maintenance. There is also further provision that no order should be made on the evidence of the mother unless corroborated in some material particular by other evidence to the satisfaction of the Magistrate. Under s. 28 of the Births and Deaths Registration Act there are no such safeguards.

There is no express requirement in the Act that notice should be served on the alleged father. One may assume that a Court will direct notice to such a person but in view of the terms of the provisions an application may even be made to have the name of a dead man inserted as the father of a child. There is, in the Act, no time limit within which an application has to be made and indeed an application under s. 28 (1) (a) can only be made after a child has become a major. Accordingly, if the procedure under this section is applicable to a determination of the paternity of an illegitimate child which is not admitted, an order may be made that the name of a dead person should be inserted as the father of the child without the alleged father having had an opportunity of being heard on an application many years after the original registration of the birth. The application in this matter is in fact made nearly twenty years after the date of the original registration.

The provisions in s. 28 are general and it may at first sight appear that an application of this nature would fall within them, but general words in a statute have sometimes to be given a restricted meaning. The principle has been stated thus :

“ The maxim that general words are limited in their application is constantly acted upon. The maxim itself is expressed by Bacon (Max. Reg. 10) : ‘ For all words whether they be in deeds or statutes or otherwise, if they be general, and not express and precise, shall be restrained unto the fitness of the matter or person ’ ” (Dictum of Cleasby, B. in *Gunnstead v. Price*¹.)

Accordingly, provisions couched in general terms are given a restricted operation where it is necessary to do so in order to avoid injustice or hardship and are not extended to cover a matter in which they would operate unjustly or harshly unless it was the intention of the legislature manifested in express words that they should apply to that matter. I am unable to find in the provisions in s. 28 express words manifesting an intention that the question of disputed paternity of an illegitimate child should fall to be determined upon an application made under them. One would incline to the view that it was not the intention of the legislature that such a question should be decided by a procedure which being very summary and not suited for a decision of an issue of that nature may lead to an untoward harsh and unjust result.

I am therefore of the view that upon proper construction, the provisions of s. 28 (2) do not empower the Court to make an order adjudicating on an issue as to the disputed paternity of an illegitimate child.

¹ 1875 *Law Reports 10 Ex. 65 at 69.*

In *Karonchihamy v. Registrar of Births*¹ an order was made for rectification of an entry in respect of the birth of an illegitimate child by the insertion of the name of the father but in that case the respondent admitted paternity. With respect I agree that where paternity of an illegitimate child is admitted or not disputed an application under s. 28 will lie. Again a woman may obtain a finding by a competent court in other proceedings, for example, in a maintenance action, that a person is the father of her illegitimate child and may thereafter make an application for rectification of the birth entry. I am inclined to the view that in such circumstances an application would lie though it is unnecessary to decide the question in this matter as the petitioner admitted that she did not claim maintenance from the respondent-appellant.

There is one other matter to which I should like to refer. The petitioner stated that her daughter was now a teacher and that she made the application because the Education Department had called for the rectification of the Birth Certificate. The direction by the Department was no doubt made on the basis that an application in terms of the Act would lie. Now that this Court has held that such an application does not lie, I trust the Department will reconsider the direction.

I allow the appeal, set aside the order of the learned District Judge and direct that the application of the petitioner stand dismissed. There was no previous decision on the point raised in this matter and the application was made in the interests of a minor. I make no order for costs of the proceedings in the Court below but the appellant will be entitled to costs of appeal fixed at Rs. 105.

WEERAMANTRY, J.—I agree.

Appeal allowed.
