

1958

Present : Weerasooriya, J.

BEERAN, Petitioner, and MINISTER OF DEFENCE AND
EXTERNAL AFFAIRS *et al.*, Respondents

*S. C. 214—Application for a Writ of Mandamus and/or Certiorari on
the Minister of Defence and External Affairs and two others*

*Muslim Law—Marriage—Entry in marriage register—Its scope as best evidence of
marriage—Muslim Marriage and Divorce Act, No. 13 of 1951, ss. 2, 18, 24 (4),
71, 82, 85—Citizenship Act, No. 18 of 1948, s. 11A.*

The petitioner, a Muslim of Indian origin, procured the registration of a second marriage in Ceylon contrary to the express provisions of section 24 (4), read with sections 18 (1) (a), 82 and 85, of the Muslim Marriage and Divorce Act. The description of the petitioner's civil condition as "unmarried" in the marriage certificate was false. Thereafter the petitioner made application to be registered as a citizen of Ceylon under section 11A of the Citizenship Act, on the basis that he was the spouse of a citizen of Ceylon. To establish the validity of his marriage, he relied on the marriage certificate and on the provisions of section 71 of the Muslim Marriage and Divorce Act according to which the marriage certificate shall be accepted as the best evidence of the marriage to which the certificate relates.

Held, that section 71 of the Muslim Marriage and Divorce Act applies only to an entry of particulars relating to a marriage which may lawfully be registered under the Act. It does not apply to an entry relating to a marriage the registration of which is expressly prohibited.

APPPLICATION for a writ of *mandamus* and/or *certiorari*.

M. S. M. Nazeem, with *M. T. M. Sivardeen*, for the petitioner.

D. St. C. B. Jansze, Q.C., Acting Attorney-General, with *E. R. de Fonseka*, Crown Counsel, for the 2nd respondent.

Cur. adv. vult.

October 3, 1958. WEERASOORIYA, J.—

This is an application for a mandate in the nature of a writ of *mandamus* and/or *certiorari*. The matter came up in the first instance before my brother Sinnetamby and he directed notice to issue on the 2nd respondent alone, who is the Permanent Secretary to the Ministry of Defence and External Affairs. The 1st respondent is the Minister of Defence and External Affairs. The 3rd respondent is the Assistant Permanent Secretary to the Ministry of Defence and External Affairs.

The petitioner is of Indian origin and has been residing in Ceylon since 1936. In his application R1, dated the 9th November, 1955, for a temporary residence permit under the Immigrants and Emigrants Act, No. 20 of 1948; he described himself as married to one Bebe Fatuma a person of Indian nationality. On this application he was granted a *visa* to expire finally on the 17th September, 1956. Representations made by him to the Controller of Immigration and Emigration with a view to having this period further extended did not meet with success.

As would appear from the marriage certificate P1 a (vide translation P1b) purporting to have been issued under the Muslim Marriage and Divorce Act, No. 13 of 1951, at the time when the petitioner made the application R1 he had already gone through a form of marriage with one Kunji Pathumma on the 25th June, 1955. In that certificate his civil condition is given as "unmarried". R1 does not give the date of the petitioner's marriage with Bebe Fatuma but the position taken up by Mr. Nazeem who appeared for him was that the marriage was still subsisting at the time when he went through the form of marriage with Kunji Pathumma. Mr. Nazeem admitted that the description of the petitioner's civil condition as "unmarried" in the certificate P1 is false, and also that in regard to the petitioner's marriage with Kunji Pathumma there was non-compliance with the provisions of section 24 of the Muslim Marriage and Divorce Act relating to the notices to be given where a married male Muslim living with or maintaining one or more wives intends to contract another marriage. That these provisions are of an imperative nature would seem to follow from sub-section (4) of section 24 which provides that no marriage contracted by such a Muslim shall be registered under the Act where the requisite notices had not been given.

Section 2 of the Act provides that the Act shall apply only to the marriages and divorces, and other matters connected therewith, of those inhabitants in Ceylon who are Muslims. Neither in the application for the writ nor in the supporting affidavit is there any averment that the petitioner and Kunji Pathumma are persons to whom the Act applies, but even if they are persons of that description, it would appear from the vital admissions made by Mr. Nazeem that the petitioner procured the registration of his marriage with Kunji Pathumma contrary to the express provisions of sub-section (4) of section 24 by a false declaration under section 18 (1) (a) and he thereby committed offences punishable under sections 82 and 85 of the Act.

Subsequent to the alleged marriage between the petitioner and Kunji Pathumma the latter was (on the 28th October, 1957) registered as a citizen of Ceylon under the Indian and Pakistani Residents (Citizenship) Act, No. 3 of 1949. On the 8th March, 1958, the petitioner had an interview with the 3rd respondent at which the question of the petitioner being registered as a citizen of Ceylon under section 11A of the Citizenship Act, No. 18 of 1948, on the basis that he was the spouse of a citizen of Ceylon was discussed. With reference to that interview he was informed by the 2nd respondent by his letter P6 dated the 18th March, 1958, that it was "quite impossible" to recognise the petitioner's marriage with Kunji Pathumma and that therefore there was no question of his being entitled to Ceylon citizenship by virtue of it. He was also informed that the Controller of Immigration and Emigration would be authorised to allow the petitioner time finally till the 30th April, 1958, to wind up his affairs and leave Ceylon and that if the petitioner failed to leave by that date steps would be taken to enforce his departure. It is not clear what proof was adduced by the petitioner at the interview on the 8th March, 1958, of the validity of his marriage with Kunji Pathumma.

On the 22nd May, 1958, an order for the arrest of the petitioner and his removal from Ceylon was made under section 28 (1A) of the Immigrants and Emigrants Act. On this order he was arrested on the 11th June, 1958, and released on security being given on the 12th June, 1958. It was on the 11th June, 1958, that for the first time the application of the petitioner in the prescribed form for his registration as a citizen of Ceylon under section 11A of the Citizenship Act was forwarded to the 2nd respondent by Kunji Pathumma. R10 is a copy of this application. Annexed to the application was a copy of the certificate of the petitioner's marriage with Kunji Pathumma. By letter P8 dated the 11th June, 1958, the 2nd respondent informed Kunji Pathumma that the petitioner's application for Ceylon citizenship could not be entertained and referred her to the 2nd respondent's earlier letter dated the 18th March, 1958 (P6) to the petitioner.

The 2nd respondent is a prescribed officer under sub-sections (2) and (3) of section 11A of the Citizenship Act, No. 18 of 1948. Where an application for registration as a citizen of Ceylon is made by any person under the provisions of section 11A, sub-section (3) requires that the

prescribed officer shall, if he is satisfied that the applicant has the qualifications specified in that sub-section, forward it to the Minister for consideration. One of the qualifications specified is that the applicant is the spouse of a citizen of Ceylon by descent or registration. The 2nd respondent having refused to forward the petitioner's application dated the 11th June, 1958, to the Minister (as is to be presumed from the reply P8), the question arising for decision in these proceedings is whether a writ of mandamus should issue to compel the 2nd respondent to forward it.

The position taken up by the 2nd respondent against the issue of the writ is that the petitioner is not qualified to be registered as a citizen of Ceylon under section 11A of the Citizenship Act, No. 18 of 1948. This was further amplified by the Acting Attorney-General who stated that one of the grounds for the 2nd respondent's refusal to forward the petitioner's application to the Minister was that the 2nd respondent was not satisfied on the material placed before him that the petitioner had contracted a valid marriage with Kunji Pathumma. If this ground is made out the 2nd respondent was under no statutory duty to forward the petitioner's application to the Minister for consideration.

The only evidence adduced before the 2nd respondent, as well as at the hearing before me, in proof of the petitioner's alleged marriage with Kunji Pathumma was the certificate P1A purporting to have been issued under the provisions of the Muslim Marriage and Divorce Act. Section 71 of that Act provides, *inter alia*, that a certified copy of the entry in the register of marriages kept under section 18 shall be accepted and received in all Courts as the best evidence of the marriage to which the entry relates.

While the certificate P1A contains the various particulars relating to the petitioner's alleged marriage with Kunji Pathumma which are required to be entered in the register of marriages kept under section 18 of the Muslim Marriage and Divorce Act (where the registration of the marriage is not expressly prohibited under the Act), the question that arises is whether the provisions of section 71 (in so far as it relates to marriages) would be applicable to that certificate so as to make it the best evidence of the marriage. If section 71 is not applicable the evidentiary value of the certificate P1A is clearly nil. In my opinion section 71 applies only to an entry of particulars relating to a marriage which may lawfully be registered under the Act. It does not apply to an entry relating to a marriage the registration of which is expressly prohibited, and such an entry is void and of no legal effect. Although I have formed this opinion without the assistance of any argument by Counsel on either side (as the particular point was not dealt with at the hearing before me) it seems to me, having considered the matter anxiously, that no other conclusion is possible.

Even if for the reasons stated by me the provisions of section 71 do not apply to the certificate P1A, it would appear to have been open to the petitioner to have adduced other evidence, before the 2nd respondent

as well as before me, that he had contracted with Kunji Pathumma a valid marriage under the Muslim Marriage and Divorce Act (notwithstanding his non-compliance with the provisions of section 24 relating to the notices to be given by him). In this connection see the case of *The King v. Peter Nonis*¹. Such evidence the petitioner failed to adduce.

In the view that I have taken it is not necessary to consider the various arguments addressed to me by the Acting Attorney-General against the issue of the writ. The application fails and is dismissed with costs payable to the 2nd respondent which I fix at Rs. 315.

Application dismissed.

¹ (1947) 49 N. L. R. 16.

