

1973 Present : Wijayatilake, J., and Walgampaya, J.

H. M. SOMAWATHIE, Petitioner and K. L. DANNY, Respondent

S. C. 607/72—Application for the transfer of D. C. Tangalle
No. 297/D to the District Court of Negombo

Civil Procedure Code—Section 10—Transfer of action—Rule of balance
of convenience.

An application for the transfer of an action from one District Court to another District Court should be decided in terms of section 10 of the Civil Procedure Code upon “the balance of convenience of parties”.

APPPLICATION for the transfer of an action from the District Court of Tangalle to the District Court of Negombo.

P. P. S. Fernando, for the 1st defendant-petitioner.

J. W. Subasinghe, for the plaintiff-respondent.

September 5, 1973. WIJAYATILAKE, J.—

Mr. Fernando, learned Counsel for the Petitioner, in support of this application draws our attention to the case of *Ratnawathie v. Samarasinghe*¹—68 N.L.R. 211, where T. S. Fernando, J., has observed: “that applications of this nature should in terms of Section 10 of the Civil Procedure Code be decided upon the balance of convenience of parties.”

¹ (1963) 68 N. L. R. 211.

This is an action for divorce filed by the husband on the ground of adultery and for the custody of the three children aged 10, 8 and 7 years respectively. Both the 1st defendant and the co-respondent are resident at Negombo and it would appear from the averments in the plaint that the adultery had also taken place, if at all, at Negombo. The three children of the 1st defendant are also resident and schooling at Negombo, and it is submitted that it would be highly inconvenient for the 1st defendant to travel all the way with the children to Hambantota for this action.

Mr. Subasinghe, learned counsel for the respondent, objects to this application, and he submits that the plaintiff is employed at Hambantota and it would be inconvenient for him to travel all the way to Negombo.

However, upon the balance of convenience, in the social set up of this country, we adopt the principle referred to above by T. S. Fernando, J., and allow the application for a transfer of this case to the District Court of Negombo.

WALGAMPAYA, J.—I agree.

Application allowed.

