

1961

Present : Tambiah, J.

U. S. PREMAWANSA, Appellant, and K. SOMALATHA,
Respondent

S. C. 223—M. C. Matale, 5531

Maintenance—Order made in favour of wife—Effect on it of subsequent divorce—Kandyan Marriages and Divorce Act No. 44 of 1952 (as amended by Act No. 34 of 1954), s. 35.

An order for maintenance in favour of a wife ceases to have effect after the date of her subsequent divorce.

The appellant was married to the respondent under the Kandyan Marriages and Divorce Act on the 18th February 1957. On the 21st July 1959, in a maintenance action filed by the respondent, the appellant was ordered to pay maintenance. Subsequently, divorce proceedings were filed under the above-mentioned Act and an order granting dissolution was made on the 16th December 1959 by the District Registrar. In the divorce proceedings the District Registrar ordered the appellant to pay the respondent the same sum as ordered by the Magistrate in the maintenance proceedings.

Held, that no distress warrant could be issued to recover any arrears of maintenance due after the date of the divorce.

APPEAL from an order of the Magistrate's Court, Matale.

L. G. Weeramantry, for the Respondent-Appellant.

No appearance for the Applicant-Respondent.

Cur. adv. vult.

June 22, 1961. TAMBIAH, J.—

The appellant was married to the respondent under the Kandyan Marriages and Divorce Act (No. 44 of 1952, as amended by Act No. 34 of 1954), on the 18th of February 1957. On the 21st of July 1959, in the maintenance action filed by the respondent against the appellant, the latter was ordered to pay maintenance at the rate of Rs. 10 per month to the respondent. Subsequently, divorce proceedings were filed under the abovementioned Act and an order granting dissolution was made on the 16th of December 1959 by the District Registrar.

On an application made by the respondent, by motion dated 26th November 1959, claiming arrears of maintenance and a distress warrant to recover the same, an inquiry was held by the learned Magistrate on the 3rd of December 1960. At the inquiry, the appellant produced the certificate of divorce granted by the District Registrar and claimed that the Court cannot enforce the order for maintenance as the marriage between the parties had been dissolved. The learned Magistrate rejected the submission of the appellant and made order that the respondent was

entitled to recover from the appellant arrears of maintenance at Rs. 10 per month. The appellant has appealed from the order of the learned Magistrate.

An order for the dissolution of marriage has the effect of rendering the order for maintenance ineffective as from the date of the dissolution (vide *Abdur Rahaman v. Sakhina*¹; *In the matter of Din Muhammed*²; *Mt. Aziman v. Pir Baksh*³; *Meniki v. Siyathuwa*⁴. This Court has even gone to the extent of holding that an order for separation has the same effect, vide *Simon Appu v. Somawathie*⁵). It would be artificial to contend that because the order was not cancelled, a right, which has been extinguished, could be revived and a liability that had been terminated could be enforced (*Simon Appu v. Somawathie* (supra)). Hence, the order for maintenance ceases to have any effect after the date of the divorce.

However, in the instant case, the respondent is not without a remedy. The District Registrar, acting under the Kandyan Marriages and Divorce Act (supra), has ordered the appellant to pay the respondent the same sum as ordered by the Magistrate in the maintenance proceedings. The respondent could enforce this order in the same manner as an order made by the District Court in a matrimonial action under Chapter 42 of the Civil Procedure Code (vide Sec. 35 of the Act, No. 44 of 1952). Under the repealed Ordinance (Kandyan Marriages Ordinance (Cap. 96)) the order of the District Registrar could be enforced as if it was an order for maintenance made by a Magistrate (vide Section 20 of the Kandyan Marriages Ordinance (supra); *Surana v. Ukku*⁶). This Ordinance is no longer in force.

Therefore, I hold that no distress warrant could be issued to recover any arrears of maintenance due after the 16th of December 1959, but such a warrant could be issued to recover all arrears due up to that date. The mere filing of an action for divorce, however, does not have the effect of cancelling a maintenance order (vide *Wimalawathie Kumarihamy v. Imbuldeniya*⁷) but once a decree is entered, the order for maintenance by a Magistrate ceases to have any operation for any period subsequent to the date of divorce.

I set aside the order of the learned Magistrate and send the case back to enable the Magistrate to determine the arrears of maintenance due up to the 16th of December 1959 and to issue a distress warrant for the recovery of the sums due up to that date if such a course becomes necessary. The respondent was not represented in the appeal and there will be no costs awarded in this Court and in the Magistrate's Court.

Order set aside.

¹ 5 *Calcutta* 558.

² 5 *Allahabad* 226.

³ 1876 *Pun. Rep. No. 1 Gr.*, p. 1 (2).

⁴ (1940) 42 *N. L. R.* 53 at 54.

⁵ (1933) 56 *N. L. R.* 275.

⁶ (1944) 45 *N. L. R.* 196.

⁷ 39 *O. L. W.* 75.