

1967 *Present* : Alles, J., and Siva Supramaniam, J.

D. S. WIJERATNE, Appellant, and JOAN A. WIJERATNE,
Respondent

S. C. 403/65(F) and 104/66 (Inty.)—D. C. Colombo, 6366/D.

Action for divorce—Determination of amount of permanent alimony—Relevancy of sum claimed as alimony pendente lite.

In an action for divorce, sufficient ground must be shown before the Court can award as permanent alimony a sum in excess of the amount claimed by the wife as alimony *pendente lite*.

APPEAL from an order of the District Court, Colombo.

H. W. Jayewardene, Q.C., with J. Fernandopulle and S. C. Crossette-Thambiah, for the defendant-appellant.

L. W. Athulathmudali, for the plaintiff-respondent.

Cur. adv. vult.

July 3, 1967. SIVA SUPRAMANIAM, J.—

The only matter canvassed in the course of the argument in appeal in this case was the quantum of the permanent alimony awarded to the respondent. The learned District Judge dealt with this question in his judgment in a brief paragraph which runs as follows :—

“ The plaintiff has asked for permanent alimony in a sum of Rs. 1,000 per month together with a sum of Rs. 400 being Visa Tax payable annually and Rs. 350 per month for the maintenance of her son. Considering the monthly income of the plaintiff (defendant) as would appear from the evidence of Louis the Chief Accountant of Lever Bros. and the fact that a rich uncle had left him an estate worth over half a million rupees, the amounts asked for by the plaintiff are very reasonable and should be allowed.”

Counsel for the appellant submitted that the sum of Rs. 1,000 per month awarded as permanent alimony is excessive and is not warranted by the evidence in the case. He had no objection to the order directing the appellant to pay a sum of Rs. 350 per month as maintenance for the child.

According to the evidence of Louis, to which reference was made by the learned Judge, the nett salary earned by the appellant in the year 1964 (when the action was instituted) was about Rs. 1,944 per mensem. The learned Judge misdirected himself on the facts when he assumed that the appellant had inherited from his uncle an estate worth over half a million rupees. The evidence showed that the appellant and his brother were equally entitled to the inheritance. The estate consisted principally of about 200 allotments of village lands. There was no evidence led by either party in regard to the income derivable from the said lands.

Although the plaintiff-respondent claimed in her plaint dated 16th March 1964 a sum of Rs. 1,000 per month as permanent alimony, in her petition filed on 6th April 1964 (which was supported by an affidavit) she claimed only a sum of Rs. 750 a month as alimony *pendente lite*. On the date fixed for inquiry the parties arrived at a compromise in terms of which the respondent was content to accept Rs. 500 per month as alimony *pendente lite*.

The sum of Rs. 750 was claimed as alimony *pendente lite* by the respondent on the basis (which was, however, not admitted by the appellant) that the appellant's monthly income was Rs. 5,000—Rs. 2,500 as salary and allowances and Rs. 2,500 as income from his property. It was not the respondent's case that the appellant's total income exceeded Rs. 5,000 per month on the date on which the order for permanent alimony was made. Nor was there any evidence to show that the circumstances of the respondent had changed between the date of her application for alimony *pendente lite* and the date of the order for permanent alimony in such a manner as to render the amount claimed by her in her petition for

alimony *pendente lite* inadequate for her needs. The learned trial Judge should have paid due consideration to these matters before he made his award for permanent alimony but he failed to do so.

Under the English practice, where there has been a full inquiry into the means of the parties upon an application for alimony *pendente lite* the amount of permanent alimony is determined upon the evidence then given and the question is not permitted to be reopened unless the circumstances have meanwhile changed. (Vide *Bonser v. Bonser* ¹.) In the instant case, however, there was no inquiry into the means as the amount was fixed by consent.

Having regard to all the circumstances of the case, we do not think there was sufficient ground for the learned trial Judge to award to the plaintiff-respondent as permanent alimony a sum in excess of the amount claimed by her in her petition as alimony *pendente lite*. We are therefore of opinion that the sum of Rs. 1,000 per month awarded as permanent alimony should be reduced to Rs. 750 per month. In addition the appellant will pay the respondent such sum, if any, as she may be called upon to pay each year as Visa Tax during her stay in this country. The decree nisi and the decree absolute entered thereafter will be varied accordingly.

Subject to the above variation the appeals are dismissed with costs.

ALLES, J.—I agree.

Order varied.
