

1963 Present : H. N. G. Fernando, J., and T. S. Fernando, J.

B. C. RATNAWATHIE, Petitioner, and **S. SAMARASINGHE**,
Respondent

*S. C. 223 of 1963-In the matter of an Application for the
transfer of D. C. Balapitiya 356/X to D. C. Colombo*

*Action for divorce-Forum-Alternative courts-Application for transfer of action from one court
to the other-Balance of convenience-Civil Procedure Code, ss. 10 and 507.*

Where an action for divorce can be instituted in one of two courts, application may be made under section 10 of the Civil Procedure Code for the transfer of the case to the more convenient court.

APPLICATION for withdrawal and transfer of an action.

S. D. Percy Valentine, for the defendant-petitioner.

S. Kanagaratnam, with *H. L. K. Karawita*, for the plaintiff-respondent.

Cur. adv. vult.

June 20, 1963. **T. S. FERNANDO, J.-**

The plaintiff (husband) instituted an action in the District Court of Balapitiya on 11th February 1963 praying for a divorce from the defendant (wife) on the ground of malicious desertion and for the custody of the two children of their marriage. The parties were married in Colombo on 3rd January 1958, and appear to have lived together also at Colombo from the date of their marriage till the date of the alleged desertion which is set down in the plaint as 14th December 1961. The plaintiff works as a binder at the District Court of Colombo while the defendant still lives at Colombo. After the date of the alleged desertion it is asserted by the plaintiff that he has taken up residence at the house of his parents in Induruwa which is within the jurisdiction of the District Court of Balapitiya. He apparently travels daily from Induruwa to Colombo for the purpose of attending to his work as a binder in the District Court of Colombo. Section 597 of the Civil Procedure Code permits the plaintiff to institute this action in the District Court of Balapitiya as much as he is now resident at Induruwa.

The defendant prays for a transfer of the action to Colombo alleging, inter alia, (b) that Balapitiya has been chosen as the venue of the Court in order to harass her, (b) she cannot afford the traveling and other expenses attendant upon a trial in an outstation Court, (c) her witnesses are all in Colombo, (d) she finds it difficult to arrange for the care of her two children who are of very tender age on which she will be required to

attend court at Balapitiya and (e) a transfer of the case to Colombo will be both more convenient and less expensive to the plaintiff himself. The plaintiff's principal reason for resisting the transfer are that (i) he is known to all the District Judges at Colombo who may for that reason find it embarrassing to hear the case which would then tend to get postponed, and (ii) it would be embarrassing to him to have his domestic duties aired in the very court where he works and will continue to work.

The onus of satisfying this Court that ground exists warranting the transfer is upon the defendant. Section 10 of the Civil Procedure Code enacts that " when the action might have been instituted in any one of several courts, the balance of convenience only shall be deemed sufficient cause for such withdrawal and transfer to one of the alternative courts. " This action could have been filed either in the District Court of Balapitiya or in that of Colombo. There does not appear to be any real substance in grounds (a) and (b) relied on by the defendant but having regard to the facts that the parties and the witnesses all live in Colombo and that a trial at Colombo will be less expensive to the plaintiff himself, it seems to me that on the balance of convenience the case calls to be tried in the District Court of Colombo. In saying so, I am not unmindful of reason (ii) advanced by the plaintiff for resisting this application for transfer. While there is no reason to doubt that the fear he there refers to is entertained by him bona fide, nevertheless in the somewhat unusual circumstances of the case justice will, in my opinion, be done if this application is decided upon the balance of convenience to parties.

I order that Case No. X. 356 be withdrawn from the District Court of Balapitiya and transferred to the District Court of Colombo. There will be no costs of this application.

H. N. G. FERNANDO, J.-I agree.

Application allowed.

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