

[PRIVY COUNCIL]

**1965 Present : Lord Reid, Lord Morris of Borth-y-Gest, Lord Hodson, Lord Pearce,  
and Lord Wilberforce**

**P. P. WICKREMASURIYA**, Appellant, and **S. L. S. R. SAMARASURIYA**,  
Respondent

**PRIVY COUNCIL APPEAL No. 29 OF 1964**

*S. C. 165/1960-D. C. Gampaha, 6748/D*

*Divorce-Constructive malicious desertion-Proof-Marriage Registration Ordinance (Cap. 112), s. 19.*

In this action instituted by a wife on the 16th January 1958 seeking dissolution of her marriage, the wife's case was that, shortly after she married on the 31st January 1957, her husband began to treat her and then continued to treat her with cruelty as a result of which she left him and returned to her parents on the 10th October 1957. The basis of her claim was that her husband's conduct was such as to amount to constructive malicious desertion.

The evidence of cruelty, which was accepted by the Court, spoke mainly of (1) continuous harassment over an alleged dowry, and (2) ill-treatment and neglect of the wife during her pregnancy and shortly after the child was born on the 26th November 1957. The findings of the trial Judge recorded his view that the husband " did not want " his wife.

It was submitted on behalf of the husband that even if the allegations of the plaintiff were true, the conduct of the defendant did not in law amount to constructive malicious desertion and that the evidence could only prove indifference on the part of the husband towards his wife and child and did not in law justify her refusal to live with him. It was also contended that the evidence did not support or justify any inference that the husband had the animus deserendi.

**Held**, that the trial Judge's findings and inferences on the evidence and in regard to the law applicable were sufficient to entitle the wife to dissolution of marriage on the ground of constructive malicious desertion on the part of her husband.

**APPEAL** from a judgment of the Supreme Court.

*E. F. N. Gratiaen, Q.C., with T. C. Kellock, Q.C. and Eugene Cotran*, for the defendant-appellant.

*Ashley Bramall*, for the plaintiff-respondent.

*Cur. adv. vult.*

October 21, 1965. [*Delivered by LORD MORRIS OF BORTH-Y-GEST*]-

The parties to this appeal were married in Colombo on the 31st January 1957. They parted on the 10th October 1957 in circumstances which, as alleged by the respondent (the wife) in a plaint for dissolution of marriage

---

156

which she brought on the 15th January 1958, amounted to constructive malicious desertion on the part of her husband (the appellant). Issues were framed on the 25th May 1959 and after a hearing on various days in the year 1959 and in the year 1960 the judgment of the District Court was delivered on the 11th April 1960. The learned District Judge ordered and decreed that the marriage be set aside, dissolved and annulled by reason of the husband's constructive malicious desertion. Other orders were made including one giving the wife the custody of a child who was born on the 26th November 1957. The appellant (the husband) had filed an answer in which he denied the allegations of cruelty which were contained in the plaint. He had cross-prayed for dissolution of the marriage (and custody of the child) on the grounds of the wife's desertion.

Section 19 of the Marriage Registration Ordinance (Vol. 5-Legislative Enactments of Ceylon-Cap. 112) is in the following terms :-

"19. (1) No marriage shall be dissolved during the lifetime of the parties except by judgment of divorce a vinculo matrimonii pronounced in some competent court.

(2) Such judgment shall be founded either on the ground of adultery subsequent to marriage, or of malicious desertion, or of incurable impotency at the time of such marriage.

(3) Every court in Ceylon having matrimonial jurisdiction is hereby declared competent to dissolve a marriage on any such ground. "

The husband appealed to the Supreme Court and after a hearing on the 14th June 1962 his appeal was dismissed. Final leave to appeal to Her Majesty in Council was given by the Supreme Court of Ceylon on the 19th October 1962.

The learned judge in his judgment in the District Court referred to the marriage as an arranged one. The wife who was 23 years of age at the time of the marriage lived at Gampaha. Her father had a private school there. In addition to owning his residence there he owned 80 acres of paddy field at Hingurakgoda. The husband some 12 years older than the wife lived at Matara which is over 100 miles from Gampaha. Before the marriage was arranged the parties were complete strangers to each other.

In his judgment the learned Judge recorded that the wife's father promised to give her a dowry of Rs. 25,000 although the husband had said that he was content not to ask for one. There were discussions (of which the wife was unaware) between her father and the husband's father. When the wedding day approached the wife's father found that as certain financial expectations of his had not materialised he could not then find the money that he had promised as a dowry. He suggested a postponement of the marriage. The husband's father then devised a scheme which would obviate this. In the result he lent the wife's father Rs. 35,000 (at 8% interest) and took a mortgage of the latter's residential

---

157

premises at Gampaha. The dowry was increased to Rs. 30,000. At the time of the wedding (on the 31st January 1957) there was a further development. The learned Judge recorded it as follows :- " Defendant's father wanted to show the world that the dowry was much bigger. He

gave a further sum of Rs. 20,000 to the plaintiff's father. In the presence of the gathering it was declared that the cash dowry was Rs. 50,000 and that the sum was paid .... It does not appear, at these stages, that there was any discussion with regard to the paddy field which was the only property left to the plaintiff's parents and their other children unencumbered. Considering the manner in which the defendant and his father acted it is extremely unlikely that if there was an agreement to give 40 acres of paddy field they would not have got a transfer before the marriage or an effective document agreeing to convey later. "

After the marriage the parties went to live in a self-contained flat which was in the house of the husband's parents. Soon after the marriage the wife became pregnant.

The wife's case was that shortly after the marriage her husband began to treat her and then continued to treat her with cruelty as a result of which she left and returned to her parents on the 10th October. The basis of her claim was that his conduct was such as to amount to constructive malicious desertion. In support of this case her amended plaint set out certain specific complaints which raised issues of fact for determination by the learned Judge. They were as follows :-

" 4. Since a few days after the marriage the defendant and his parents have been continuously harassing the plaintiff stating that the dowry given was not enough although to her knowledge there was no talk of dowry before the marriage.

5. In June, 1957, the defendant brought the plaintiff to Gampaha and sent her to her parents to ask her father to transfer the forty acres of paddy land belonging to him to the plaintiff and the defendant.

6. As the plaintiff failed to get the said transfer the defendant and his parents started insulting and humiliating the plaintiff and treating her with gross cruelty which conduct amounted to constructive malicious desertion.

6A. The plaintiff states that the defendant treated her with cruelty particularly in that he-

(a) Refused to allow the plaintiff to visit her father during his illness in 1957 ;

(b) Refused to stay with the plaintiff in her father's house at Gampaha during visits when occasion arose ;

(c) Frequently intercepted letters written to the plaintiff by her parents;

(d) Prevented the plaintiff from visiting her friends and relations;

(e) Neglected the plaintiff and failed to give her care during her pregnancy ;

---

158

(f) Refused to allow the plaintiff to go to her parents' house for her confinement;

(g) Refused to arrange for the plaintiff to enter hospital for her confinement;

(h) Refused to pay the plaintiff's lying-in expenses and hospital charges;

(i) Insulted and humiliated the plaintiff in hospital shortly after childbirth.

7. As the plaintiff was cruelly treated and neglected the plaintiff got down her mother and left for her parents' home on the 10th day of October, 1957."

In his judgment the learned Judge analysed the evidence relating to the question whether there

was a promise by the wife's father to transfer 40 acres of paddy land and whether the husband and his parents were labouring under a delusion that the paddy land had been promised. The wife's belief was that the ill-treatment of which she complained resulted from or dated from some real or fancied grievance or disappointment of the husband relating to the paddy land. The Judge held that there had not been any promise to give 40 acres of paddy land. He added : " Now the question arises, though there was no promise, did the defendant ask for a paddy field and harass the plaintiff to obtain one from her father. Anyone who has seen the plaintiff in the witness-box would have been impressed by her evidence. What is the other cause for displeasure ? None, except that the atmosphere in the big house of the defendant's father was unwholesome. "

In regard to the specific allegations of cruelty which were pleaded in paragraph 6A of the wife's amended plaint the finding of the learned Judge was that they were established. Dealing with allegations of neglect and failure to give care during the wife's pregnancy the learned Judge said "Surely those acts could not have been done with good intent ". Concerning the husband's refusal to allow his wife to go to her parents' house for her confinement the learned Judge said : " Can one say that her request to go to her parents' house for the first confinement is unreasonable ? The husband has been unkind, ungenerous and even inimical towards her. Her life was in danger and she may not have survived to unfold her tale of woes if she remained in the defendant's house at Matara for the confinement. The defendant has acted cruelly in refusing to grant her permission. "

Dealing with some of the other allegations the learned Judge said : " Though he appropriated the cash dowry of Rs. 30,000 provided by the plaintiff's father the only present given to her after the marriage was a saree-of the value of Rs. 10 or Rs. 12. When the plaintiff asked for money from him at the hospital he offered Rs. 2 which was not accepted by her. Then he created a scene at the hospital and sent a constable with a message. If he was genuinely fond of his wife and was wanting her, that was not the correct method of approach. When he sent the constable, not that he wanted his wife but he wanted to have evidence. He is only anxious to

---

159

have a divorce, but he did not offer to return the dowry of Rs. 30,000. He wanted a divorce himself-that is he did not want her ; but he wanted to have with him the dowry. " In another part of his judgment the learned Judge said that on all material facts he accepted the evidence of the wife and her parents and rejected the evidence of the husband when he contradicted them.

In addition to the issues which had been framed and accepted on the 25th May 1959 two further issues were accepted during the trial.

Having in his judgment recorded his conclusions in regard to the specific allegations of cruelty the learned Judge proceeded to answer the issues which had been framed and accepted. The issues and the answers were as follows :-

1. Did the defendant in June 1957 send the plaintiff to her father at Gampaha to ask him to transfer to the defendant and the plaintiff forty acres of paddy land belonging to the plaintiff's father ? A. Yes.
2. As the plaintiff failed to obtain a transfer of the said paddy land, did the defendant and his parents insult and humiliate the plaintiff and treat her with cruelty ? A. Yes, even before.
3. Did the defendant treat the plaintiff with cruelty as alleged in paragraph 6A of the plaint ? A. Yes.
4. If issue 2 and/or 3 is answered in the affirmative is the defendant guilty of constructive malicious desertion ? A. Yes.

5. Did the plaintiff leave the defendant for her parents' home on 10th October 1957 as a result of the defendant's conduct alleged in issue 2 and/or 3 ? A. Yes.
  6. If so, is the defendant guilty of constructive malicious desertion ? A. Yes.
  7. If the plaintiff is granted divorce, to what amount of permanent alimony per month is she entitled from the defendant ? A. Rs. 400 per month.
  8. Should the custody of the child Ravindra Rohan be granted to the plaintiff or the defendant ? A. To the plaintiff.
  9. If the custody of the said child is granted to the plaintiff, what monthly sum should the defendant pay to the plaintiff as maintenance for the said child ? A. Rs. 200 per month.
  10. Did the plaintiff maliciously desert the defendant on 10th October 1957, as averred in paragraph 5 of the answer ? A. No-definitely her life was in great danger and her parents had to rescue her.
  11. If so, is the defendant entitled to a dissolution of the marriage on the ground of malicious desertion by the plaintiff ? A. Does not arise.
  12. Is the defendant entitled to the custody of the child 1 A. No.
- 

160

13. Does the plaint disclose a cause of action for a dissolution of her marriage ? A. Yes.
14. Did the defendant fail to provide a home where the plaintiff could reasonably live ? A. Yes.
15. If so, is the defendant guilty of constructive malicious desertion ? A. Yes.

It would have been helpful if the judgment had contained fuller reasoning in regard to the finding that the husband was guilty of constructive malicious desertion. It would have been more satisfactory if the judgment had set out clearly the conclusions reached which showed that the husband had the essential intentions which warranted the finding against him of constructive malicious intention. On appeal to the Supreme Court this point was doubtless stressed. In the petition of appeal to the Supreme Court one amongst the many grounds of appeal which were to be argued was thus expressed :-

"It is submitted that even if the allegations made in paragraph 6 A of the amended plaint are true, the conduct of the defendant does not in law amount to constructive malicious desertion. Such evidence can only prove indifference on the part of a husband towards his wife and does not in law justify her refusal to live with him. The desertion, it is therefore submitted, was on the part of the plaintiff who without lawful justification left the defendant and returned to her parents. "

The appeal to the Supreme Court was dismissed. There was no oral or written judgment.

Before their Lordships' Board it was recognised that the argument on behalf of the husband must proceed on the basis of the findings of primary facts which were made by the learned Judge in the District Court. The dismissal of the appeal to the Supreme Court involves that there are concurrent findings in regard to such facts. It was submitted however that there was either misdirection or non-direction concerning the intention of the husband and that a finding of constructive malicious desertion ought not to have been made. It was submitted that such a finding was not warranted merely because of the conclusions which were reached by the learned Judge in the District Court on the issues as to cruelty. It was also contended that the evidence did not

support or justify any inference that the husband had the animus deserendi.

Their Lordships are unable to accept these contentions. The findings of the learned Judge recorded his view that the husband " did not want " his wife. The findings of the learned Judge were reached after having had the advantage-denied to Appellate Courts-of seeing and hearing the parties. It was for the learned Judge to decide whether the husband's conduct towards his wife caused her to leave : it was for the learned Judge to decide all such questions of knowledge and intention on his part as would show whether he was guilty of desertion.

---

161

After the wife left and returned to her parents' home she was visited by Police Officers who had apparently been sent to see her following a report made to them by the husband's father that she had taken away some jewellery and some cash. Even in spite of having been subjected to such treatment the wife thereafter wrote to her husband in conciliatory terms and in reference to a resumption of married life. She recorded various complaints against her husband's parents. Their Lordships see no reason to doubt that the learned Judge gave consideration to these matters and to all the evidence bearing upon the husband's conduct, attitude and reactions both before and after the 10th October.

Their Lordships observe that in the final addresses of learned Counsel in the District Court the learned Judge was referred to the cases of *Silva v. Missinona* [1 (1924) 26 N. L. R. 113. ] and *Bamalingam v. Ramalingam* [2(1933) 35 N. L. R. 174.] as well as to certain provisions of the Civil Procedure Code and the Evidence Ordinance. In the speeches the evidence was analysed and submissions were directed to the question whether the evidence in the case was sufficient to satisfy the requisite standard of proof. From the expressed conclusions of the learned Judge in regard to the formulated issues it is seen that even before the defendant became disappointed in the matter of the paddy lands he insulted and humiliated the plaintiff and treated her with cruelty. Following upon a finding to this effect and following upon a finding that the husband treated the wife with cruelty in the specific respects alleged in the plaint the learned Judge had to address himself to the issue whether the husband had been guilty of constructive malicious desertion. The decision was that the husband had been so guilty. Though the judgment might have been more ample their Lordships cannot conclude that the learned Judge did not consider all the evidence and cannot conclude that he misdirected himself either in regard to the evidence or in regard to the law applicable.

Their Lordships will humbly advise Her Majesty that the appeal should be dismissed. The appellant must pay the costs of the respondent.

---

*Appeal dismissed.*

- End -