

1948

Present : Basnayake J.

SARASWATHY, Appellant, and KANDIAH, Respondent.

S. C. 122—M. C. Point Pedro, 9,991.

Maintenance—Jurisdiction—Residence of defendant—Cause of action—Applicability of Civil Procedure Code—Maintenance Ordinance self-contained.

The neglect or refusal of the defendant to maintain his wife and children may be regarded as a cause of action which will confer jurisdiction on a Court where proceedings are taken under the Maintenance Ordinance.

Obiter : A Magistrate has jurisdiction to entertain an application under section 2 of the Maintenance Ordinance regardless of the residence of the parties or the place where the cause of action arises. The Maintenance Ordinance is self-contained and it is not correct to resort to the Civil Procedure Code to construe it.

Jane Nona v. Van Twest (1929) 30 N. L. R. 449 doubted.

A PPEAL from a judgment of the Magistrate, Point Pedro.

S. Mahadevan, for the appellant.

No appearance for the respondent.

Cur. adv. vult.

April 5, 1948. BASNAYAKE J.—

The appellant applied to the Magistrate of the Magistrate's Court of Point Pedro for an order for maintenance in respect of herself and her three children. The learned Magistrate rejected her application on the ground that the applicant's residence was within the jurisdiction of the Magistrate's Court of Jaffna sitting at Mallakam and that he had therefore no jurisdiction to entertain the application.

It is not clear from the learned Magistrate's order what provision of law he had in mind when he held that the applicant "had not made her house within the jurisdiction of this court. Hence her residence is within the jurisdiction of the Mallakam Courts and not within the jurisdiction of this Court". It cannot be that the learned Magistrate had in mind section 9 of the Civil Procedure Code because under that section the court within the local limits of whose jurisdiction the party instituting the action resides has no jurisdiction to entertain an action on the ground that such party resides there. The case of *Jane Nona v. Van Twest*¹ which is a decision of two Judges of this Court and is binding on me lays down that the tests laid down in section 9 of the Civil Procedure Code should be applied for the purpose of determining a Magistrate's jurisdiction to entertain an application under section 2 of the Maintenance Ordinance. In the present case it is admitted that the defendant was at all times including the date on which these proceedings were instituted living at Chunnakam, a place outside the jurisdiction of the Magistrate's Court of Point Pedro. Then has the Magistrate's Court of Point Pedro jurisdiction under section 9 (c) of the Civil Procedure Code? It appears from the evidence that the neglect or refusal to maintain the applicant was indicated by the defendant for the first time at Chunnakam. If the neglect or

¹ (1929) 30 N. L. R. 449.

refusal to maintain is regarded as the cause of action the Magistrate's Court of Point Pedro has no jurisdiction. I therefore uphold the Magistrate's order though for different reasons.

The Maintenance Ordinance is a special enactment which enacts special rights and creates the machinery for enforcing them. It is self-contained and it has been held by this Court in the case of *Anna Perera v. Emaliano Nonis*¹ that it supersedes the common law rights. I therefore find myself unable to reconcile the decision in *Jane Nona v. Van Twest (supra)* with the rules of interpretation of a special enactment such as the Maintenance Ordinance. In my view it is not correct, I say so with the greatest respect, to resort to other enactments to construe a self-contained instrument. Where as in this case a statute creates a new variety of a right which previously existed at common law all common law incidents will attach to that new variety of right², but it is not permissible to import into it provisions of other statutes existing at the time of its enactment. My own view is that a Magistrate has jurisdiction to entertain an application under section 2 regardless of the residence of parties or the place where the cause of action arises. In my opinion the special provisions commencing with section 11 and ending with section 18 leave no room for holding that the absence of a provision such as section 9 of the Civil Procedure Code is a *casus omissus*. On the other hand those very provisions are an indication that the legislature has designedly abstained from imposing any limitation on a Magistrate's right to entertain an application thereunder.

The appeal is dismissed.

Appeal dismissed.
