

SURANGI
v
RODRIGO

COURT OF APPEAL
AMARATUNGA, J.
CALA 310/02
D.C. COLOMBO CASE NO. 21698/D
FEBRUARY 17, 2003

Civil Procedure code S. 40(e) – Has the Court jurisdiction to grant reliefs not prayed for in the prayer to the Plaintiff.

By her plaint the plaintiff – petitioner claimed a divorce on malicious desertion/constructive malicious desertion. She also averred that a cause of action has accrued to her to recover damages of Rs. 700,000/- by way of permanent alimony. The defendant respondent contended in his answer that, the plaintiff has no right to claim damages. The plaintiff after her evidence was led, raised an issue whether the plaintiff was entitled to permanent alimony in a sum of Rs. 700,000/-. This was objected to on the basis that there is no prayer to permanent alimony and no issue had been framed relating to payment of alimony. This was upheld.

On leave being sought :

Held :

1. No court is entitled to or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaintiff.
2. The plaintiff has intended to recover Rs. 700,000/- from the defendant as damages and she has deliberately and unequivocally prayed for damages in prayer "B". Her intention is to use the damages so recovered as permanent alimony. Therefore her claim is not a claim for alimony at all.
3. In the absence of a prayer for alimony, the Court was correct in refusing to allow the petitioner to frame an issue relating to alimony.

APPLICATION for Leave to appeal.

1. *Sirinivasa Thero v Sudassi Thero*- 63 NLR 31
2. *Martin Singh v Kularatne* - CA 248/95 CAM 18.12.96

3. *Wijesuriya v Senaratne* - (1997) - 2 Sri LR 323
4. *Dinoris Appuhamy v Sopinona* - 77 NLR 188 (Distinguished)

Pubudu de Alwis for the petitioner.

Rohan Sahabandu for respondent.

Cur.adv.vult

March 17, 2003

GAMINI AMARATUNGA, J.

This is an application for leave to appeal against an order made by the learned Additional District Judge of Colombo refusing to accept four issues framed on behalf of the plaintiff-petitioner in the course of the trial into her action filed to obtain a divorce. By her plaint she has claimed a divorce on the basis that her husband has maliciously deserted her and/or that he is guilty of constructive malicious desertion. In paragraph 15 of the plaint the petitioner has stated that a cause of action has accrued to her to recover damages in a sum of Rs. 700,000/- from the defendant by way of permanent alimony necessary for her maintenance. In paragraph 'B' of the prayer to the plaint she has prayed for damages in a sum of Rs. 700,000/- for the pain of mind and the (mental) unrest caused to her due to the conduct of the defendant. 01 10

In the body of the plaint she had alleged that the defendant is a person who has homosexual tendencies; shortly after marriage he left her alone at home and went in search of his gay partners and sometimes spent the whole day with them without caring for her; when she was expecting a child he compelled her to manually move two tractor loads of earth to the rear compound; he never allowed her to rest and always compelled her to attend to the work at home; when she started bleeding as a result of her work (manually moving earth from one place to the other) he neglected to take her for medical treatment until her condition became serious; after she was admitted to hospital he did not come to see her and on the day she was discharged from hospital he did not come to take her to the matrimonial home and for this reason she had to go to her parent's house with them. She has also alleged that when she was at their parent's home they sent messages to him to come and take her to his house but he did not respond. 20

In his answer the defendant has specifically taken up the position that in an action for divorce the plaintiff has no right in law to claim damages for mental pain and unrest. Even after this position was taken up in the answer the plaintiff has not taken steps to amend the prayer to her plaint to make it a claim for alimony instead of damages. No issue was framed whether the plaintiff has any right to obtain any sum of money by way of alimony or damages.

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At the trial the plaintiff testified. In her evidence she stated that she claims a sum of Rs. 700,000/- as permanent alimony. In cross-examination not a single word was asked perhaps with reasons on behalf of the defendant about her claim regarding permanent alimony.

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After her evidence was over the plaintiff's Counsel suggested four more issues as follows :

No. 13 : Whether the defendant conducted himself in the manner set out in paragraph 5,6,7 and 8 of the plaint?

No. 14 : Whether the plaintiff had to leave her matrimonial home on 12.1.2002 due to the conduct of the defendant referred to in above issue No 13 ?

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No. 15 A : If the above issue is answered in the affirmative is the defendant guilty of constructive malicious desertion?

No. 15 B : If the above issue is answered in the affirmative is the plaintiff entitled to obtain a decree for divorce in her favour ?

No. 16 : Is the plaintiff entitled to permanent alimony in a sum of Rs. 700,000/-

On behalf of the defendant, Counsel objected to the issue relating to permanent alimony on the basis that there is no prayer for permanent alimony and no issue had been framed relating to permanent alimony. The Counsel has said that the plaintiff has been cross-examined on the basis that there was no issue relating to permanent alimony. The learned District Judge has rejected all issues i.e. issue 13 to 16. The learned Counsel for the petitioner

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complained that although the defendant's Counsel did not object to issues 13,14,15A and 15B but confined his objections to issue No 16, the learned Judge has rejected all issues.

With regard to issue No 16 relating to permanent alimony the learned Judge has held that the plaintiff has not initially framed an issue relating to alimony and by attempting to frame an issue after the plaintiff's evidence was concluded, the plaintiff attempts, without making a formal amendment to the plaint to achieve the same result by way of an issue. From this I presume that what the learned Judge meant was that without amending the prayer relating to damages to read as alimony the plaintiff attempts to achieve his object by bringing in an issue relating to alimony. 70

The learned counsel for the petitioner submitted that issues are not restricted to pleadings and cited several cases in support. There is no question about the correctness of this legal position. What is material to consider is whether the mere framing of an issue without amending the prayer would help the petitioner. Section 40(e) of the Civil Procedure Code enacts that the plaint shall contain a demand of the relief which the plaintiff claims. This is the prayer. No court is entitled or has jurisdiction to grant reliefs to a party which are not prayed for in the prayer to the plaint. *Sirinivasa Thero v Sudassi Thero*⁽¹⁾, *Martin Singho v Kularatna*⁽²⁾ and *Wijesuriya v Senaratna* ⁽³⁾. 80

The learned Counsel for the petitioner submitted that the term damages in prayer has been inadvertently used for the term alimony and this misdescription should not prejudice the claim of the petitioner. He cited the decision in *Dinoris Appuhamy v Sopinona*⁽⁴⁾ where the Court held that the plaintiff's reference in the plaint to a partnership in the context was a reference to co-ownership and that the misdescription in the pleadings could not prevent the framing of issues on the basis of the true character of the action. 90

However in this case the question arises whether the term damages has been inadvertently used to mean alimony. In order to ascertain this one has to closely examine the pleadings. In paragraph 15 of the plaint it is stated that a cause of action has accrued to the plaintiff to recover damages in a sum of Rs. 700,000/- as permanent alimony to be used for the expenses necessary for her 100

maintenance. This paragraph very clearly shows that the plaintiff intended to recover Rs. 700,000/- as damages to be used as permanent alimony. Then the plaintiff in prayer 'B' goes on to state why and on what basis she claim Rs. 700,000/- as damages. She has prayed for damages in a sum of Rs. 700,000/- for pain of mind and the unrest caused her due to the aforesaid conduct and the behaviour of the defendant. What is this aforesaid conduct and behaviour? In the earlier part of this order I have fully set out the allegations made by her about the conduct and the behaviour of the defendant. She has therefore intended to recover Rs. 700,000/- from the defendant as damages and she has deliberately and unequivocally prayed for damages in prayer 'B'. In law she is not entitled to claim such damages in these proceedings. Therefore her prayer is misconceived in law. Her intention is to use the damages so recovered as permanent alimony. Therefore her claim is not a claim for alimony at all. In these circumstances in the absence of a prayer for alimony, the learned District Judge was correct in refusing to allow the plaintiff to frame an issue relating to alimony. Therefore the learned Judge's ruling as far as it relates to issue No. 16 is affirmed. Issues No. 13,14,15A and 15B are more detailed issues relevant to issues already framed. The learned counsel for the respondent did not seriously challenge those issues. Therefore I set aside that part of the learned Judge's order relating to issue No 13,14,15A and 15B and direct him to accept those issues. Subject to that order leave to appeal is refused and the application is dismissed without costs.

Leave to Appeal refused, subject to variation.