

[IN THE COURT OF APPEAL OF SRI LANKA]

1972 Present : Fernando, P., Samerawickrame, J., and
Siva Supramaniam, J.

ALARMALAMMAL, Applicant, and S. P. NADARAJAH,
Respondent

C. A. APPLICATION No. 36 OF 1972

S. C. 515/67 (F)—D. C. Jaffna, 1074/D

Court of Appeal—Application for leave to appeal in a matrimonial suit—Scope—Action for declaration of nullity of marriage—Degree of satisfaction the Court has to reach before granting decree.

The Supreme Court dismissed the appeal of the defendant-wife in a matrimonial suit in which her husband, the plaintiff, was granted a decree declaring that the marriage was null and void on the ground that the defendant was insane at the time of the marriage. The defendant applied for leave to appeal to the Court of Appeal on the ground that the plaintiff should have proved his case beyond reasonable doubt and not on a balance of probabilities.

Held, that the application for leave to appeal should be refused. An action for divorce or for a declaration of nullity of marriage being a civil proceeding, the Civil Procedure Code read with the Evidence Ordinance indicates the degree of satisfaction the Court has to reach before holding in favour of the plaintiff.

APPPLICATION for leave to appeal from a judgment of the Supreme Court.

M. Tiruchelvam, with *K. Thevarajah*, *C. Chakradaran* and *Ranil Wickramasinghe*, for the defendant-applicant.

C. Thiagalingam, with *P. Somatilakam* and *Miss P. Sittampalam*, for the plaintiff-respondent.

Cur. adv. vult.

October 27, 1972. FERNANDO, P.—

This applicant for leave to appeal from a decree of the Supreme Court dismissing her appeal to that Court is the unsuccessful defendant in a matrimonial suit in which her husband, the plaintiff, was granted by the District Court a decree declaring their marriage null and void on the ground that the defendant was insane at the time of the marriage.

The ground upon which we were invited to grant leave to appeal was that the trial judge, in deciding the question of the insanity of the defendant by applying as the standard of proof satisfaction on a balance of probabilities and not beyond a reasonable doubt, has erred on a question of law of general or public importance.

In this case the plaintiff was not seeking to establish the commission of what may be described as a matrimonial offence. We are free to point out however that, even if that had been the case, it is questionable,

having regard to the decision of the House of Lords in *Blyth v. Blyth*¹ (1966) 1 (A.E.R. 524) whether the local case of *Jayasinghe v. Jayasinghe*² (1954) 55 N.L.R. 410) upon which learned counsel for the applicant heavily relied is any longer good law. That question can be decided, if the need arises, on some other more suitable occasion.

An action for divorce or for a declaration of nullity of marriage is a civil proceeding. Where, under the Civil Procedure Code, the plaintiff is entitled to a decree in case the Court is satisfied on the evidence, it would seem that our Evidence Ordinance lays down the degree of satisfaction that has to be reached. It may therefore be unnecessary to look for guidance from other jurisdictions.

For the reason shortly stated above, we refused leave to appeal, but without costs.

Application refused.

