

**ROWEL
v.
DABRERA**

COURT OF APPEAL
D.P.S. GUNASEKERA, J.
MC CHILAW NO. 82532;
CA NO. 1/1988 WITH
CA NO. 404/86
AUGUST 03, 1989

Maintenance – Jurisdiction – Judicature Act, No. 2 of 1978 as amended by Act, No. 71 of 1981

After the passage of the Judicature (Amendment) Act, No. 71 of 1981, certified on 18 November 1981, jurisdiction to hear maintenance applications was re-vested in the Magistrate's Court. The jurisdiction of the Family Court in respect of maintenance matters under the Maintenance Ordinance has been taken away by Act, No. 71 of 1981.

APPEAL from order of the Magistrate's Court, Chilaw.

P. R. Vikramanayake for respondent - appellant

M. Devasagayam for applicant - respondent.

Cur. adv. vult.

October 6, 1989.

GUNASEKERA, J.

In this case the Applicant-Respondent claimed maintenance for herself and her three children from the Respondent-Appellant. At the inquiry as it transpired that the elder child who was a male had attained majority and was employed, the claim was limited for the payment of maintenance for the Applicant-Respondent and her two minor children. After inquiry the learned Magistrate has made an order for the payment of maintenance in a sum of Rs. 1,500 per month in respect of the two female children till they attain majority - payment to be made from the date of the application.

At the hearing of this appeal the main contention of the learned counsel for the Respondent-Appellant was that the learned Magistrate's order was bad for the reason that the Magistrate's Court of Chilaw had no jurisdiction for the reason that there was a Family Court at Chilaw. It was contented on behalf of the appellant that by virtue of Sec. 24 Subsection (1) of the Judicature Act that the proper forum which had jurisdiction to entertain a claim for maintenance in this case was the Family Court in Chilaw. This contention of the counsel for the Appellant has no merit for the reason that the Judicature Amendment Act, 71 of 81 which was certified on 18 November 1981 took away the jurisdiction of the Family Court in respect of maintenance matters under the Maintenance Ordinance and re-vested jurisdiction in respect of maintenance claims in the Magistrate's Courts. Therefore I hold that the Magistrate's Court of Chilaw had jurisdiction to hear and determine this application. At the inquiry before the Magistrate the Applicant gave evidence and called her daughter Sujeewa Dabrera and the Respondent's brother

Benedict Dabrera to testify on her behalf whilst the Respondent-Appellant did not call any evidence to refute the claim made by the Applicant-Respondent. The learned Magistrate having considered the evidence led before him has come to a strong finding of facts in ordering the payment of maintenance. The learned counsel for the Applicant-Respondent has drawn my attention to the evidence of the Respondent-Appellant.

The learned Magistrate has taken into consideration the totality of the evidence led before him and in my view has come to a proper assessment in regard to the quantum of maintenance to be paid by the Respondent-Appellant. I see no reason to interfere with the order of the learned Magistrate and therefore I dismiss this appeal.

Revision application 404/86 was also taken up with this appeal and in view of the conclusion I have arrived at, in this appeal I refuse that application also.

Appeal dismissed.

Revision refused.
