

1957

Present: Sansoni, J.

D. M. ABEYSEKERA, Appellant, and SOMAWATHIE
ABEYSEKERA, Respondent

S. C. 1204 (with Application 500)—M. C. Kandy, 15,847

Kandyan Law—Maintenance—Procedure for enforcement of order obtained under Kandyan Marriage Ordinance (Cap. 96), s. 20—Effect of Kandyan Marriage and Divorce Act, No. 44 of 1952, ss. 67-70.

After the Kandyan Marriage and Divorce Act No. 44 of 1952 came into operation in 1954, a Magistrate's Court has no jurisdiction to entertain an application for the enforcement of an order for maintenance made by a Registrar under section 20 of the Kandyan Marriage Ordinance upon the dissolution of a Kandyan marriage. When the Kandyan Marriage Ordinance was repealed by section 67 of Act No. 44 of 1952, the procedure for the enforcement of an order for maintenance made under the repealed Ordinance was also necessarily repealed.

APPEAL from a judgment of the Magistrate's Court, Kandy.

F. R. Dias, for the respondent-appellant.

S. Thangarajah, for the petitioner-respondent.

February 25, 1957. SANSONI, J.—

The parties to this appeal were husband and wife at the time an application for maintenance was made by the wife in 1952. In that year a consent order was made by the magistrate that the husband will pay Rs. 35 a month as maintenance to the wife.

In April, 1953, the parties, being Kandyans, went before the Provincial Registrar and their marriage was dissolved under the Kandyan Marriage Ordinance, Cap. 96. The Registrar acting under section 20 (2) (b) of that Ordinance made the order that the court order for maintenance should continue to operate even after the dissolution. Perhaps, what he meant by that was that the husband must continue to pay the wife the sum of Rs. 35 a month. He could not, of course, have ordered that the order for maintenance previously made should continue to have effect, because by reason of the dissolution of the marriage that order ceased to have any validity.

In 1956, the applicant filed an affidavit before the magistrate in the same maintenance case and moved for a notice on her former husband to show cause why he should not pay Rs. 55 being arrears of maintenance which fell due in 1956. Notice was served on the former husband who apparently showed cause against the application, and the matter was

fixed for inquiry. The magistrate made order after inquiry that as the Registrar's order which adopted the court order regarding maintenance was made before the Kandyan Marriage and Divorce Act No. 44 of 1952 came into operation, that order for maintenance must stand and the arrears could be recovered by the applicant. The former husband has appealed against the magistrate's order.

The Act of 1952 came into force in 1954, and it is important to note that by section 67 it repealed the Kandyan Marriage Ordinance, Cap. 96. That Ordinance by section 20 enabled an order for maintenance made by a Registrar upon a dissolution of marriage to be enforced by a Magistrate's Court in the exercise of its jurisdiction under the Maintenance Ordinance. When, however, the Kandyan Marriage Ordinance was repealed the procedure for such enforcement was also necessarily repealed and was not therefore available to the applicant when she filed her present application in 1956.

During the argument in appeal search was made in the Act No. 44 of 1952 for some provision which might have kept alive the old procedure for the enforcement of orders made under the repealed Ordinance or introduced a new procedure regarding that matter. It would appear that there is no such provision. Although sections 68, 69 and 70 of the Act contain provisions which relate to the Kandyan Marriage Ordinance and keep alive certain provisions of this Ordinance, there is no provision relating to the matter under discussion. The only provision which even remotely has a bearing on the present case is section 69 (3) which provides that the provisions of that Ordinance shall continue in force for the purpose of the completion of any act which had been commenced but not completed under that Ordinance before the appointed date. I think that under this provision, if the present application had been filed before the Act came into operation, it could have been proceeded with under the old Ordinance, but in no sense can an application such as this which had not even been filed in 1954 be regarded as an act which had been commenced in 1954. The applicant's counsel, perhaps realising the difficult situation in which the applicant is now placed, argued that the validity of the order of dissolution is now being contested because an application for the enforcement of the provision for maintenance specified in that order is being contested. He, therefore, sought to bring this application under section 69 (2) but I do not think that section has any bearing on the matter. Nobody is contesting the validity of the order of dissolution.

The conclusion I come to is that the magistrate had no jurisdiction to entertain the present application in view of the repeal of section 20 of the Kandyan Marriage Ordinance, and it should have been dismissed.

The appeal is allowed. I make no order as to costs.

Appeal allowed.