

1956

Present : H. N. G. Fernando, J.

A. C. ABDUL GAFFOOR, Appellant, *and* MRS. JOAN CUTTILAN,
Respondent

S. C. 251—M. C. Kandy, 36,739

*Muslim Law—Maintenance—Concurrent jurisdiction of the Kathi Court and the
Magistrate's Court.*

The Kathi Court and the Magistrate's Court have concurrent jurisdiction to hear and determine applications for maintenance and it is not open to a party who has once invoked and submitted to the jurisdiction of the Kathi Court to withdraw from those proceedings and to seek to agitate the same matter in the Magistrate's Court.

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

M. M. Kumarakulasingham, for the defendant-appellant.

No appearance for the respondent.

Cur. adv. vult.

April 9, 1956. H. N. G. FERNANDO, J.—

This appeal which was dismissed for want of appearance by Chief Justice Rose on 1st June, 1955, was subsequently relisted upon an order made by His Lordship.

The appellant has been ordered by the Magistrate of Kandy to pay a sum of Rs. 30 monthly to the applicant for her maintenance and another sum of Rs. 30 for the maintenance of a child born to her by the appellant.

The proceedings for maintenance were instituted in the Magistrate's Court on 8th June, 1954, and the order was made by the Magistrate on 31st January, 1955.

It would appear that the parties were divorced by an order of the Kathi for the Nawalapitiya Judicial Division made on 10th August, 1952, and the final Talaq was duly registered by the Assistant Provincial Registrar of Marriages for the district of Kandy. Subsequently on 13th November, 1953 the applicant applied to the Kathi Court of Kandy in case No. 2,182 of that Court for maintenance for herself and the child. After notice to the respondent and the fixing of inquiry dates, proceedings were taken upon the application and the evidence of the applicant was recorded and she was cross-examined on 11th April, 1954, and the inquiry was then postponed for the 20th June, 1954. On the 10th of June—two days after the filing of the application in the Magistrate's Court, Kandy—the applicant filed a motion in the Kathi Court “to stay proceedings pending the Magistrate's Court case No. 36,739” which latter is the case from which there is now an appeal. On the 20th June in the Kathi Court, the proctor for the present appellant urged that the proceedings of the Kathi Court should continue but the applicant moved to withdraw the case. Thereupon the Kathi Court called upon the applicant to proceed with the case which she declined to do.

The Kathi Court and the Magistrate's Court have concurrent jurisdiction to hear and determine applications for maintenance and in my opinion it is not open to a party who has once invoked and submitted to the jurisdiction of the Kathi Court to withdraw from those proceedings and to seek to agitate the same matter in the Magistrate's Court. The objection that the Magistrate had no jurisdiction by reason that proceedings were already pending in the Kathi Court was taken before the Magistrate and should in my opinion have been upheld by the Magistrate. I would therefore hold that the Magistrate did not have jurisdiction on 10th June, 1954, to entertain the application which was made to him on that day.

I would therefore allow the appeal with costs and set aside the order under appeal.

Appeal allowed.