

1963     *Present* : H. N. G. Fernando, J., and T. S. Fernando, J.

G. A. ARIYAPALA, Appellant, *and* L. ARIYAPALA, Respondent

*S. C. 212 of 1960—D. C. Matara, 271/D*

*Divorce—Suit by husband—“ Malicious desertion ”.*

Where the break up of a marriage and the departure of the husband from the wife is due to the violent conduct on the part of the wife which is not justified by the behaviour of the husband, the husband may sue for divorce on the ground of malicious desertion.

**A**PPEAL from a judgment of the District Court, Matara.

*H. W. Jayewardene, Q.C., with S. S. Jayewardene and St. N. D. Tilakaratne, for the Plaintiff-Appellant.*

*N. E. Weerasooria, Q.C., with N. R. M. Daluwatte, for the Defendant-Respondent.*

May 17, 1963. H. N. G. FERNANDO, J.—

In this action where the plaintiff-husband sued for divorce and the defendant counterclaimed for divorce, in each instance on the ground of malicious desertion, the learned District Judge dismissed both the action and the counterclaim. He held on the facts that the husband had left the wife and commenced to reside in a hotel at Matara. According to the wife this departure was occasioned by the fact that the husband had requested the wife to mortgage her property and lend money to him and she had refused to do so. This version has clearly been rejected by the District Judge. The learned District Judge, in fact, accepted the reasons given by the husband for his departure from the home. According to him the wife had become jealous because of some association which the husband had with a lady who was a relation to him who lived in the adjoining house and who looked after the children of the husband by his earlier marriage. The wife's consequent conduct had been so violent that the husband said he was compelled to leave the house. On this matter the learned District Judge has stated in his judgment that his opinion is that the wife had made the home miserable by nagging and reproaches and that this conduct on her part was due to her jealousy for which there were no adequate grounds. Having regard to this opinion of the facts formed by the learned District Judge it seems to us that in the opinion of the learned District Judge himself the husband had no alternative but to leave the home because the wife was making him miserable by her conduct. It has to be held in consequence that the break up of the marriage and the departure of the husband was due to the violent conduct on the part of the wife which was not justified by the behaviour of the husband.

The decree dismissing the action is set aside. Let a decree be entered allowing the plaintiff's action, granting a decree for divorce *a vinculo matrimonii* to be made absolute after three months.

There will be no order for costs of appeal.

T. S. FERNANDO, J.—I agree.

*Appeal allowed.*