

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

FAMILY COURT APPEAL No.48 of 2016

**-
26.02.2016**

Between:

Jami Suryanarayana

..Appellant

And

Smt.Jami Appalakonda

..Respondent

Counsel for the appellant: Mr.R.K.Suri

Counsel for the respondent: --

The Court made the following:

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JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This appeal arises out of the order and decree, dated 18.11.2015, in F.C.O.P.No.512 of 2011 on the file of the learned Judge, Family Court-cum-V Additional District and Sessions Judge's Court, Visakhapatnam.

2. The respondent claiming to be the wife of the appellant filed the aforementioned O.P. purportedly under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, for payment of arrears of maintenance of Rs.72,000/- and for future maintenance at the rate of Rs.2,000/- per month from the date of filing of the O.P. It is her pleaded case that her marriage with the appellant was solemnized and the same was consummated resulting in her being blessed with a son, by name, Mahesh, who was aged 28 years at the time of filing of the O.P. That the appellant was working at that time as a Driver in Andhra Pradesh State Road Transport Corporation (A.P.S.R.T.C.) in Maddilapalem depot, that he was addicted vices, such as gambling, womanising and leading luxurious life, by spending money lavishly and that he used to stay in the house of his concubine and failed to lookafter the welfare of the respondent and their son, all the years. That on the dispute raised by the respondent, a mediation was held by the caste elders in 1987, during which, the appellant expressed his ill-feelings towards the respondent and agreed to pay Rs.2,000/- per month to her and the same was reduced into writing. The respondent further pleaded that the appellant paid the agreed amount till April, 2008 and thereafter, he discontinued the payment. Therefore, the respondent filed the aforementioned O.P.

3. The appellant filed a counter-affidavit in the O.P., wherein he denied his marriage with the respondent and also his paternity with

regard to the son of the respondent. He also denied his addiction to vices and his agreeing to pay a sum of Rs.2,000/- per month and his paying such amount till April, 2008 to the respondent. He further pleaded that the respondent became an orphan as her relatives did not look after her, that she was brought to his house on humanitarian grounds and that after living in his house, the respondent deserted him about 29 years ago and she was living with her sister's husband till the date of filing of the O.P. He also averred that the respondent flatly refused to come and join him and that one Ramanamma served him during the period of his illness on humanitarian grounds and later, relationship of husband and wife developed between them and accordingly, he has been living with the said Ramanamma.

4. On the respective pleadings of the parties, the lower Court has framed the following points:

“1. Whether the petitioner is entitled for Rs.72,000/- claimed as the past maintenance for three years from May, 2008 to April, 2011?

2. Whether the petitioner is entitled for the maintenance @ Rs.2,000/- per month towards future maintenance from the date of filing of this petition i.e., since May, 2011?”

On behalf of the respondent, she examined herself as P.W.1 and one Jami Satyam as P.W.2 and marked Exs.A-1 to A-5. On behalf of the appellant, he examined himself as R.W.1 and one Smt. Jami Ramanamma as R.W.2 and marked Exs.B-1 to B-3. On appreciation of the oral and documentary evidence, the lower Court has allowed the O.P. and granted the relief as prayed for by the respondent.

5. Mr.R.K.Suri, learned counsel for the appellant, has strenuously argued that the appellant never married the respondent and that the lower Court has committed a serious error in accepting the plea of the respondent on its face value and granting maintenance. He has also submitted that the appellant never executed Ex.A-5 letter, dated

10.01.1987, agreeing to pay maintenance at the rate of Rs.2,000/- to the respondent and that he never paid such maintenance amount, and that too up to April, 2008.

6. In support of the claim of the respondent that she is the legally wedded wife of the appellant, besides her oral evidence given as P.W.1, P.W.2 her brother has also deposed in her favour. In his cross-examination as R.W.1, the appellant admitted that his mother is the younger sister of Majji Adiyya, who is his father-in-law and that the respondent and one Suramma are the daughters of Majji Adiyya and Majji Lakshamma. Based on this evidence, the lower Court has held that the respondent is the legally wedded wife of the appellant.

7. We have carefully perused the evidence of the appellant given as R.W.1. Though in his chief-examination, he has denied his marriage with the respondent, in his cross-examination, he has, *inter alia*, deposed as under:

“In the year 1983, one Mahesh was born to me through the petitioner. The Mahesh was joined in St. Anthony School. In the year 1979, I was joined as a driver in RTC. Prior to joined in RTC I has been worked as a driver on private vehicles. By the time I used to received Rs.35/- per day. After marriage myself and the petitioner started conjugal life at Kummari veedhi, Maharani-peta. We used to resided in the house of one Ramanamma at Gajuwaka for rent. At 1st there was no any relations between said Ramanamma except tenant and land lord relationship.” (A true reproduction from the counter with all the grammatical mistakes)

No further evidence than the own admissions of the appellant as extracted hereinabove is needed to hold that the respondent is his legally wedded wife and that these admissions would further show that he has deserted the respondent and started living with Ramanamma, treating her as his wife. The said Ramanamma examined as R.W.2 has categorically admitted in her cross-examination that the appellant and the respondent are residing separately for the last twenty eight

years and that the appellant has kept her as mistress and she is residing with him and therefore, the respondent has been residing separately. In the light of the above clear and unambiguous evidence on record, the appellant's denial of his marriage with the respondent is proved to be a blatantly false plea.

8. Coming to the plea of the respondent that the appellant has executed Ex.A-5 – letter of undertaking, dated 10.01.1987, besides the evidence of the respondent given as P.W.1 speaking to the execution of the said document, P.W.2, who is her brother, has also deposed that he is one of the attestors of Ex.A-5. Though the appellant has denied execution of Ex.A-5, the fact that he has made false denial of marriage itself and in the face of evidence of P.Ws.1 and 2, which is worthy of acceptance, the lower Court has rightly held that the appellant has executed Ex.A-5 and in pursuance thereof, he has paid monthly maintenance amount up to April, 2008 and stopped paying the said amount from May, 2008. Considering the conduct of the appellant, who has denied his marriage with his own legally wedded wife in his pleadings as well as chief-examination and admitted the same in his cross-examination, we are convinced that he is a person, who has no respect and regard for the truth and neglected the respondent, by leading wayward life of cohabiting with another woman during the subsistence of his marriage. On a careful re-appreciation of the evidence on record, we do not find any illegality in the order of the lower Court warranting interference with the same.

9. The Family Court Appeal is, accordingly, dismissed.

10. As a sequel to dismissal of the appeal, F.C.A.M.P.No.48 of 2016 filed by the appellant for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

26th February, 2016
GHN

M.S.K.JAISWAL, J