

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

+ Family Court Appeal No.267 of 2008
and
FCA MP No.48 of 2014

% 22-6-2017

Soma Ramchandram, S/o.Late S.Venkatachalam,
Aged: 38 years, Occ: Teacher, R/o.H.No.2-1-559/A,
Urmila Nivas, Old Nallakunta, Hyderabad,
Presently residing at Kothapally, UPS
Mandal Lingala Ghanpur, Warangal District
... Appellant/Petitioner

Vs.

\$ 1. Soma Anitha, W/o.Soma Ramchandram,
Aged: 26 years, Occ: Nurse, R/o.H.No.28-174,
Near Pochamma Temple, Waddepally,
Hanmakonda, Warangal District
2. K.Ramesh, S/o.Ramajouli, Aged: 40 years,
C/o Sunil Tailors, Kumarpally,
Hanmakonda, Warangal District
... Respondents/Respondents

! Counsel for the Appellant: Mr. M.Damodar Reddy

Counsel for the Respondent: Mr. P.Venkanna
(Not present)

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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Family Court Appeal No.267 of 2008
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Judgment: (per V.Ramasubramanian, J.)

This appeal by the husband of the 1st respondent is directed against the judgment of the Family Court refusing to grant divorce on the ground of cruelty.

2. Heard Mr. M.Damodar Reddy, learned counsel for the appellant.

3. Though the 1st respondent had engaged a counsel, the counsel was not present on 25-4-2017 when the appeal appeared before another Bench. The absence of the counsel for the 1st respondent was noted by the Bench and the case was adjourned to 05-6-2017.

4. Even on 05-6-2017, the counsel for the 1st respondent was absent. But we adjourned the matter to 07-6-2017 to see if the counsel for the 1st respondent would appear.

5. However, even on 07-6-2017, the counsel for the 1st respondent did not appear. Therefore, we directed the learned counsel for the appellant to take personal notice to the 1st respondent informing her that her counsel had not appeared on two occasions and that she should appear personally before this Court today at 02.30 p.m. Notice has been accordingly sent and the counsel for the appellant has

filed Affidavit of service enclosing the postal acknowledgement card. The name of the 1st respondent was called out in Court. But she has not turned up. Her counsel has also not turned up.

6. It is seen from the pleadings as well as the evidence on record that the petition for divorce was filed by the appellant on the short ground that the 1st respondent was having illicit intimacy with the 2nd respondent and that despite the persuasions of the appellant, she was prepared to give up the appellant but not the 2nd respondent. Therefore, the appellant alleged cruelty against the 1st respondent. The appellant examined himself as P.W.1 and examined two independent witnesses as P.Ws.2 and 3. P.W.2 was a friend of P.W.1. He was examined to corroborate the allegations of the appellant.

7. P.W.3 is a handwriting expert. He was examined for the purpose of showing that Ext.P-5 letter was written by the 1st respondent to the 2nd respondent.

8. The 1st respondent examined herself as R.W.1. The 2nd respondent came before Court, filed a counter and also examined himself as R.W.2. The 1st respondent examined her elder sister as R.W.3 who was none other than the wife of R.W.2. They naturally support the case of the 1st respondent.

9. Believing the evidence on the side of the respondents, the Court below dismissed the petition for divorce. Therefore, the appellant has come up with the above appeal.

10. But it appears that the parties also had separate proceedings for maintenance under Section 125 Cr.P.C. The maintenance petition was contested on the ground that the 1st respondent was living in adultery with the 2nd respondent and they also have a child. Therefore, the appellant took out an application in CrI.M.P.No.89 of 2009 in M.C.No.8 of 2009 for sending the minor child for a DNA Test. Though the Trial Court dismissed the said application, this Court allowed the petition in CrI.P.No.777 of 2010. Accordingly, a DNA Test was conducted. As per the DNA Test, the appellant has been held to be not the biological father of the minor child given birth to by the 1st respondent.

11. Unfortunately, neither of the respondents is present before us to controvert any of the above averments. Therefore, on the basis of the material available on record, we have no alternative except to allow the appeal. Therefore, the appeal is allowed and the judgment of the Family Court is set aside. The petition for divorce is allowed on the ground of cruelty. FCA MP No.48 of 2014 is ordered. The other miscellaneous petitions, if any, pending in this appeal shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

N.BALAYOGI, J.

22nd June, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N.BALAYOGI

Family Court Appeal No.267 of 2008
and
FCA MP No.48 of 2014
(per VRS, J.)



22nd June, 2017.
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