

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.400 OF 2012

JUDGMENT: (Per the Hon'ble Dr.SA,J)

This Family Court Appeal, under Section 19 of the Family Courts Act, 1984 is filed by the appellant/petitioner, aggrieved by the order and decree, dated 20.10.2012 passed in F.C.O.P.No.953 of 2011 by the learned Judge, Family Court, Hyderabad, whereby the petition filed by the appellant/petitioner to declare him as son of the respondent, was dismissed.

2. Heard the learned counsel for the appellant/petitioner and perused the record.

3. Though notice was served on the respondent, the respondent did not choose to appear before the Court. Before the Court below also, she remained *ex parte*.

4. Learned counsel for the appellant/petitioner would submit that though there is substantial oral and documentary evidence to prove that the respondent is the natural mother of the appellant, the Court below failed to consider the same and erroneously dismissed the subject FCOP. The Court below

ignored that the respondent remained *ex parte* in the subject FCOP. All the time, the respondent treated the appellant as her natural son. There is evidence of the appellant to that effect. There are also documents, i.e., Exs.P1 to P9, to demonstrate that the respondent is the natural mother of the appellant. The Court below without properly appreciating the oral and documentary evidence on record, erroneously dismissed the subject FCOP *vide* impugned order, dated 20.10.2012 and ultimately prayed to set aside the same by allowing the appeal, as prayed for.

5. In view of the above submissions, the point that arises for determination in this appeal is:-

“Whether the appellant/petitioner is the natural son of the respondent-Smt.Emma?”

6. **POINT**:- In the case on hand, except the testimony of P.W.1, there is no other oral evidence. Ex.P1 is the photostat copy of bonafide certificate of the appellant, Ex.P2 is the photostat copy of school record sheet of the appellant, Ex.P3 is the photostat copy of certificate of Baptism, Ex.P4 is the photostat copy of two money order receipts, Ex.P5 is the photostat copies of two M.O. receipts, Ex.P6 is the photostat

copy of Air-mail addressed to the appellant, Ex.P7 is the photos of the appellant and others, Ex.P8 is the colour photostat copy of household card of the appellant and Ex.P9 is the Aadhar card of the appellant. The said documents (Exs.P1 to P7) do not reflect that the appellant is the son of the respondent. Ex.P8-household card was issued on 13.05.2011 and Ex.P9-Aadhar card was also issued in the year 2012. As on the date of filing of the subject FCOP, the appellant was aged 48 years. So, those documents were brought into existence much after the alleged handing over the appellant to the sister Mathews in the year 1964. The appellant was said to have been handed over to sister Mathews. The sister Mathews or any person, who has knowledge that the appellant is the son of the respondent, was not examined. Though the respondent remained *ex parte*, such conduct cannot be taken into consideration to conclude that she conceded that the appellant is her son. By leading cogent and convincing evidence, the appellant has to prove that he is the son of the respondent, which is patently absent in this case. The Court below having examined the entire oral and documentary evidence on record rightly arrived at a conclusion that the appellant failed to prove that the respondent is his mother. This Court is in agreement with the conclusions reached by the Court

below. In the given circumstances of the case, no other opinion can be substituted. There is no legal infirmity or illegality in the impugned order and decree, dated 20.10.2012 passed in F.C.O.P.No.953 of 2011 by the Court below. The appeal is lacking merits and is liable to be dismissed.

7. Accordingly, this appeal is dismissed confirming the impugned order and decree, dated 20.10.2012 passed in F.C.O.P.No.953 of 2011 by the learned Judge, Family Court, Hyderabad.

Miscellaneous petitions pending, if any, shall stand closed.
There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 11.10.2022
ssp