
(1943) 10 MAD CK 0008
In the Madras High Court

Kalidindi Venkataramaraju

APPELLANT

Vs

Penumatcha Rajagopala Raju and Another

RESPONDENT

Date of Decision : 18-10-1943

Acts Referred:

Citation : AIR 1944 Mad 173 : (1943) 56 LW 745 : (1943) 2 MLJ 641

Hon'ble Judges : Byers, J

Bench : Division Bench

Judgement

Byers, J.—This unfortunate matrimonial litigation would have ended in August 1942, if only the parties' advisers and the learned

Subordinate Judge had understood the effect of the parties' renewal of cohabitation. On 7th August, 1942—when the appeals came on for hearing,

the wife was reported to be willing to join her husband and eventually they went away together the same day. There were adjournments on 14th

August and 29th August, and on neither of these days did the wife appear, but in order that the appeals might be disposed of as compromised; the

learned Subordinate Judge considered it necessary that the wife should either appear and consent to the withdrawal on that she should send a letter

through her husband to this effect. The burden of seeing that this was done was placed on the husband. The wife did not again appear but on 31st

August both the vakils reported that the couple were on affectionate terms, both of them having had conversations with their respective clients. This

should have been enough for the immediate disposal of the case but a further adjournment was granted because the wife's pleader said he waited

a further period of probation." This was granted and some weeks later there was a report that the wife had again left her husband. On this it was

decided to dispose of the appeals on the merits.

2. Cruelty is a matrimonial offence which is condoned by the resumption of cohabitation and it is useless for the wife's learned advocate to argue

that condonation is a matter of evidence or that what the wife wished to do was to go back and live with her husband in order to see first how he

would treat her. "Condonation cannot be conditional and when cohabitation between the husband and wife is resumed, the husband cannot be

deemed to be on probation so that the previous cause of action can be revived if the wife is not satisfied with the husband's behaviour. By the

wife's condonation on resuming cohabitation with her husband in the first, week of August, the previous causes of action on allegations of cruelty

and failure properly to maintain were wiped out and any claim which the wife may now have to separate maintenance can arise only subsequent to

the second separation.

3. In the result the appeal by the husband is allowed and with it the appeal by the alienee in respect of the declaration regarding the husband's sale

deed in his favour. Having regard to all the circumstances of the case, I think it is desirable that the costs of both these appeals should be borne by

the husband, the costs in the lower Court being borne by the respective parties themselves. Leave is refused.