

1954

Present : Palle J.

S. D. FERNANDO, Appellant, and MILLY NONA, Respondent

S. C. 876—A. M. C. Colombo, 19,878

Maintenance—Application by wife—Presence of husband's mother—Is it a valid ground?

In an application for maintenance made by a wife—

Held, that the bare fact that the husband's mother was in the same house was not a sufficient reason for the wife's refusal to live with him.

APPPEAL from a judgment of the Additional Magistrate's Court, Colombo.

E. A. G. de Silva, for the defendant-appellant.

M. L. S. Jayasekera, with *B. E. de Silva*, for the applicant-respondent.

Cur. adv. vult.

May 24, 1954. PUILE J.—

In this case the husband, who is the appellant, has been ordered to pay Rs. 30 as maintenance for his wife and Rs. 15 for a child. Whether the wife's refusal to live with the husband is reasonable or not, the order in respect of the child must stand.

The husband offered to live with the wife in a house taken by him but she refused the offer on the ground that his mother was living in that house. She was prepared to accept the offer, if he sent away his mother. The husband refused. The learned Magistrate without taking any evidence then made the order :

“ He cannot compel applicant to live with his mother. So the applicant's refusal to go back to him is not unreasonable. Therefore, he has to pay maintenance. ”

In my opinion the bare fact that the husband's mother was in the same house was not a sufficient reason for the wife's refusal to live with him. There are authorities which support this proposition and I need refer only to *Rosa v. Adonisa*¹. The cases decided in England are also to the same effect.

I do not wish to suggest in advance the sort of circumstances in which it would be unreasonable for the husband in this case to compel the wife to live with him. The case should go back for adjudication upon evidence of the issue whether the wife without any sufficient reason refuses to live with her husband.

The order for maintenance in favour of the wife is set aside *pro forma*. There will be no order as to costs.

Case sent back for further evidence.
