

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

Mat.Appeal.No. 92 of 2013 ()

AGAINST THE JUDGMENT IN OP 157/2009 of FAMILY COURT,THRISSUR
DATED 10-08-2012

APPELLANT/RESPONDENT:

1. JOSSY JOSE.P.
S/O.JOSE, AGED 36 YEARS, RESIDING AT 34/317C
ASWATHY APARTMENTS, AKKIPADIKKAL LANE,
ARRAKKAKKADAVU ROAD, EDAPPALLY, KOCHI-24.

2. MARYKUTTY, AGED 60 YEARS,
W/O.JOSE, RESIDING AT 34/317C, ASWATHY APARTMENTS,
AKKIPADIKKAL LANE, ARRAKKAKKADAVU ROAD, EDAPPALLY
KOCHI-24.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENT/PETITIONER:

1. RESMI JACOB,
D/O.N.D.JACOB, NEELANKAVIL KOLENGADAN HOUSE,
H.NO.XI/348/7, ORCHID AVENUE, PANANCHAKAM,
MANNUTHY P.O., THRISSUR.

2. KEN (MINOR)
D.O.B.29-7-2007
REPRESENTED BY HIS MOTHER AND GUARDIAN
FIRST RESPONDENT RESMI JACOB
THE FIRST RESPONDENT.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
Mat.A.No.92 of 2013
.....

Dated this the 13th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

The respondents in OP.No157/2009 on the file of the Family Court, Thrissur are the appellants herein. O.P.No.157/2009 was filed by the respondents seeking maintenance from the appellant and his mother. The 1st appellant married the first respondent on 4.9.2006 at St. Mary's Assumptions Ferane Church and second respondent was born to them in the wedlock on 29.7.2007. The relationship between them strained. O.P.No.1697/2008 was filed for dissolution of marriage on the ground of cruelty and she also filed the present OP.No.157/2009 for return of gold ornaments and other articles or its value and also for maintenance for herself and the child. Both these cases were tried jointly. Pws 1 and 2 were examined on the side of the respondents herein and Exts.A1 to A3 were marked on their side. The first appellant was examined as RW1 and Ext.B1 was marked on his side. Both these cases were disposed of jointly by the court

below by a common judgment allowing OP.No.1697/2008 dissolving the marriage between the first appellant and the first respondent and also allowing OP.No.157/2009 in part rejecting the claim for return of gold ornaments and articles but directed the first respondent to pay maintenance at the rate of Rs.5,000/- per mensem to the first petitioner and Rs.4,000/- per mensem to the second petitioner from the date of petition. No past maintenance was ordered. Only future maintenance from the date of petition was allowed. The quantum of maintenance is under challenge by the appellants by filing the above appeal.

2. Heard counsel for the appellants and the respondents.

3. When the appeal came up for hearing today, counsel for the appellants submitted that the first respondent was married on 27.2.2014 and as such she is not entitled to get maintenance from the 1st appellant from that date onwards. Further, the amount of maintenance awarded is excessive. The 1st respondent is working in a school and she is not entitled to get any maintenance.

4. On the other hand, counsel for the respondents submitted that the 1st appellant was working abroad and getting

good income and she was without any employment. She is unable to maintain herself and the child and even if any amount has been paid, that amount can be adjusted towards arrears of maintenance as she is not entitled to get maintenance after the date of remarriage.

5. The fact that the first appellant married the first respondent and second respondent was born to them in the wedlock is not in dispute. It is also not in dispute that there was some difference of opinion arose between them and thereafter they were living separately. There is no evidence to show that any maintenance was paid to the respondents after the application has been filed. It is also in a way admitted that at the time of marriage, the first appellant was working abroad and his case was that thereafter he came back to India and he is without any employment. Though he had a case that the first respondent is employed as a teacher, except producing Ex.B1 copy of face book account, he had not adduced any evidence to prove that fact. Under the circumstances the court below was perfectly justified in not relying on Ext.B1 for the purpose of coming to the conclusion that the first respondent therein is having income to maintain herself and rightly came to the

conclusion that the appellants had failed to prove that the first respondent is having independent income to maintain herself and rightly held that she is entitled to get maintenance. The court below was perfectly justified in coming to the conclusion that the second respondent child is also entitled to get maintenance.

5. As regards the quantum of maintenance is concerned, except the oral evidence of Pws1 and RW1, there is no documentary evidence adduced before the court below to assess the actual income of the first appellant herein. He had no case that he was suffering from any illness preventing him from doing any job and getting income to maintain his wife and child. So long as the marital relationship subsists and if he is capable of doing some work and earning income, then he is liable to pay maintenance to his wife and child. Even if the marriage was dissolved, till she is remarried, she is entitled to get maintenance from her former husband. It is admitted by both sides that the first respondent remarried on 27.2.2014. So, thereafter she is not entitled to get maintenance from her former husband. So the liability of the first appellant to maintain the first respondent will cease effect from the date of

remarriage namely 27.2.2014. Till then, he is liable to pay maintenance to her. His liability to pay maintenance to the second respondent will continue till he attains majority.

6. As regards the quantum of maintenance is concerned, there is no finding of the court below regarding the quantum of income earned by the first respondent so as to fix the quantum of maintenance at Rs.5000/- to the first respondent and Rs.4,000/- to the second respondent payable by the first appellant. So considering the circumstances, we feel that reducing the maintenance to Rs.4,000/- to the first respondent and Rs.3,000/- to the second respondent will be sufficient and that will meet the ends of justice. So the quantum of maintenance awarded by the court below is set aside and the same is refixed as Rs.4,000/- to the first respondent and Rs.3,000/- to the second respondent. This amount, the first appellant is liable to pay from the date of petition before the lower court. He is liable to pay maintenance to the first respondent only up to 27.2.2014 on the date of which she remarried as admitted by both sides. The amount of maintenance if any deposited by the first appellant shall be adjusted towards the maintenance awarded by the court below

and modified by this Court and he need pay only the balance amount at the rate modified by this court,

With the above modification of the judgment passed by the court below, this appeal is allowed in part and disposed of accordingly. The amount deposited by the first appellant towards the balance maintenance amount as directed by this court to the first respondent as well to second respondent is permitted to be withdrawn by the first respondent for herself and on behalf of the second respondent minor child.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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