

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

RPFC.No. 347 of 2010 ()

AGAINST THE ORDER IN MC NO. 34/2008 of FAMILY COURT,
KASARAGOD DATED 31-10-2008.

REVISION PETITIONER(S)/PETITIONER:

PRAMEELA, AGED 52 YEARS,
W/O. GOVINDAN NAIR, BALANTHODU, P.O. PANTHADY,
PANTHUR VILLAGE, KASARGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

RESPONDENT(S)/RESPONDENT:

GOVINDAN NAIR, AGD 62 YEARS,
S/O. NEELAKHANDAN NAIR, BALANTHODU P.O.,
PANATHADY,
PANTHUR VILLAGE, KASARGOD DIST.

BY ADV. SRI.K.B.ARUNKUMAR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN
FINALLY HEARD ON 13-02-2015, THE COURT ON THE SAME DAY
PASSED THE FOLLOWING:

K. HARILAL, J.

R.P.(FC) No.347 of 2010

Dated this the 13th day of February, 2015

ORDER

The learned counsel for the petitioner submits that he has already relinquished Vakkalath and sent a letter to the petitioner; but she has not responded so far. In the absence of another lawyer, who is authorised to represent the petitioner, I am constrained to dispose of the case on merits, in view of the decision of the Apex Court in K.S. Panduranga v. State of Karnataka [(2013) (3) SCC 721].

2. The revision petitioner is the petitioner in M.C. No.34 of 2008 on the files of the Family Court, Kasaragod. The above M.C. was filed against her husband, the respondent herein, claiming maintenance

allowance under Sec.125 of the Code of Criminal Procedure. According to her, she is residing separately due to the marital discordancy which culminated in separation and thereafter, the respondent has not maintained her and refused to pay maintenance allowance to her. They lived together for three decades and children were born in that wed-lock. At the time when the M.C. was filed, the petitioner was aged 52 years and the respondent was aged 62 years. All the children are majors. According to the petitioner, the respondent had been cruel to her from the very beginning of their matrimony and when she found it difficult to live along with the respondent, she was constrained to reside separately, though she is unable to maintain herself. She has no job or income. On the other hand, the respondent has 91 cents of garden land and certain shop rooms also in his landed property. She claimed an amount of ₹1,000/- per mensem as maintenance allowance.

3. Per contra, the respondent contended that

though he has 91 cents of garden land, the income being appropriated by the petitioner. She own cows and earns ₹7,500/- per mensem by selling milk. The garden land having an extent of 5 acres and 72 cents is another source of her income.

4. After considering the rival contentions, the court below rejected the claim on a finding that the petitioner has no right to claim maintenance allowance, after living separately, leaving the company of the respondent and failed to prove that she is unable to maintain herself. The legality of the above finding is under challenge in this revision petition.

5. In this revision petition, the petitioner contended that the court below erroneously arrived at a finding that it is not a case of vagrancy or destitution that drove the petitioner to the court for claiming maintenance allowance. The court below miserably failed to consider the oral evidence of P.W.1 and R.W.1 in its correct perspective.

6. Per contra, the learned counsel for the

respondent advanced arguments to justify the reasonings whereby the court below rejected the claim for maintenance allowance.

7. The short question that arises for consideration in this revision petition is, whether the rejection of the claim for maintenance is justifiable or not?

8. The marital status of the petitioner is admitted. So also, they are blessed with children and they attained majority. They have lived together for 30 years. But, according to the petitioner, from the very beginning of her matrimony, she had been suffering at the hands of the respondent, both physically and mentally. Though, she contended that the intention of the respondent is to divorce her and to marry again, no evidence had been adduced to substantiate the said allegation. Admittedly, she had lived three decades along with the respondent. In such circumstances, the burden is heavy on the petitioner to prove that now her life along with the respondent has become unbearable and she was constrained to

live separately due to irreconcilable discordancy.

9. She admitted that she has 80 cents of property. She had indeed sought to prove the income of her husband by producing Ext.A1 series ownership certificates, which would go to show that he owns some shop rooms. It has also come out in evidence that the petitioner, along with the children, are living in the family house situating in the 80 cents of property and the respondent left away from the company of the petitioner and the children. According to him, he was driven out from the house by the petitioner and the children. As rightly considered by the court below, the crucial question is, whether she is entitled and badly in need of separate maintenance? After considering the evidence adduced by the petitioner, the court below arrived at a finding that she failed to prove that she is entitled and badly in need of separate maintenance without forfeiting her right to claim maintenance. The respondent is aged 67 years. No evidence had been adduced to show that he has source of income other

than the income derived from the shop rooms. But, at the same time, the petitioner is in possession of 80 cents of garden land from which she would get yield so as to eke out her livelihood. Unless she is unable to maintain herself, she is not entitled to get separate maintenance. When she is in possession and enjoyment of the garden land, I cannot find fault with the court below in arriving at a finding that she is able enough to maintain herself from the earnings of the landed properties. In the above view, I find that there is no illegality or impropriety in any of the findings and I do not find any perversity in the appreciation of evidence from which those findings have arrived at.

This revision petition is dismissed accordingly.

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge