

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

RPFC.No. 82 of 2011 ()

(MC 225/2010 of FAMILY COURT, KOZHIKODE)

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REVISION PETITIONER/PETITIONER:

M.SASEENDRAN, AGED 65 YEARS,
S/O GOVINDAN, KAUSTHUBHAM, MEYANAPURATH,
P.O.MAKKADA, KOZHIKODE-673617.

BY ADVS.SRI.P.V.KUNHIKRISHNAN
SRI.HANSON.P.MATHEW

RESPONDENT(S)/RESPONDENTS:

1. LINEESH M., AGED 30 YEARS,
S/O SASEENDRAN, THEKKE MAVILI HOUSE, VENGARI AMSOM,
MALIKKADAVU, P.O.KARUVISSERI, KOZHIKODE-673010.

2. LITHEESH @ RATHEESH, AGED 20 YEARS,
S/O SASEENDRAN, THEKKE MAVILI HOUSE, VENGARI AMSOM,
MALIKKADAVU, P.O.KARUVISSERI, KOZHIKODE-673010.

R1& R2 BY ADV. SRI.MATHEWS K.PHILIP

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 24-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

OKB

K.HARILAL, J.

R.P(FC). No.82 of 2011

Dated this the 24th day of June, 2015.

O R D E R

The revision petitioner is the petitioner in M.C.No.225/2010 on the files of the Family Court, Kozhikode. The above petition was filed against the respondents herein, who are his sons, claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to the revision petitioner, he is the father of the respondents 1 and 2 and he is unable to maintain himself and thereby he is entitled to get maintenance allowance under Section 125(1)(d) of the Cr.P.C. He is aged 65 years and unable to do any work so as to eke out his livelihood. Now he is depending on his relatives for maintenance. The marriage between the revision petitioner and the mother of the respondents had been dissolved by the court as per order in O.P.No.142/2008 whereas the respondents are able bodied youths, doing their own

business. They are getting a monthly income of Rs.30,000/- each. The revision petitioner claimed Rs.5,000/- per month towards his maintenance allowance.

2. The respondents admitted their paternity but contended that the revision petitioner has sufficient means to maintain himself. According to them, he has neglected them since 1981 and at that time the first respondent was having $1\frac{1}{2}$ years and the second respondent was having six months only. From 1982 onwards the mother of the respondents had been looking after them till their attaining majority. The revision petitioner ejected the respondents and their mother from the house where they had lived. From 1982 onwards the respondents were living at their mother's house under the care and protection of the maternal grand mother. It is also contended that the revision petitioner owned and possessed large extent of landed property and sold away the same with a mala fide intention to put forward the claim for maintenance against the respondents. He has sufficient money in

cash which was received by way of sale consideration which is evidenced by Exts.B1 to B9. Since he is able enough to maintain himself, he is not entitled to get maintenance allowance under Section 125(1)(d) of the Cr.P.C. After considering the rival pleas and evidence on record, the court below rejected the claim for maintenance by the impugned order under challenge. The legality of the rejection of the claim for maintenance allowance by the impugned order is under challenge in this revision petition.

3. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

4. Learned counsel for the revision petitioner advanced arguments assailing the findings whereby the court below rejected the claim of the revision petitioner for maintenance.

5. Per contra, the learned counsel for the respondents advanced arguments to justify the findings of the court below.

6. Going by the impugned order, it could be seen

that the paternity of the respondents is not disputed. But, according to them, the revision petitioner deserted them in the year 1982, when the first respondent was aged $1\frac{1}{2}$ years and the second respondent was aged only six months. Thereafter, the revision petitioner never enquired about the respondents. Admittedly, he divorced the mother of the respondents as per the order in O.P.No.142/2008. Absolutely, there is no evidence to show that the revision petitioner has been paying maintenance allowance to the respondents as well as their mother after 1982. It has also come out in evidence that he married again and a child is born to him in the second wedlock. Now he is living along with the second wife and daughter and the same stands proved by R.W.2. Going by Exts.B1 to B9 it could be seen that the revision petitioner had large extent of landed property and he has sold away the property one by one and subsequently his second wife has purchased some property. Indisputably, it can be safely concluded that he has got a huge amount by way of sale of the

landed property, which is evidenced by Exts.B1 to B9. But no explanation has come forward from him as to how he has spent that amount. I am of the opinion that the burden is heavy on the revision petitioner to show that how he has spent the amount which he had received as the sale proceeds of Exts.B1 to B9. In the absence of any evidence to that effect, it can reasonably be presumed that he has means to maintain himself and an adverse inference can be drawn against the revision petitioner under Section 114(g) of the Indian Evidence Act. This revision petition is devoid of merits.

In the result, this R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.