

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

RPFC.No. 86 of 2011 ()

MC 192/2010 of FAMILY COURT,KOZHIKODE DATED 08-12-2010

REVISION PETITIONER(S)/RESPONDENT:

ROSAMMA, AGED 60 YEARS, D/O. JOHN,
NIRAPPEL HOUSE, P.O.NOORAMTHODE, KODANCHERI AMSOM
CHIPPILITHODE DESOM, KOZHIKODE TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/PETITIONER:

A.P.KURIAN, AGED 70 YEARS, S/O. PAILY,
ELIVALUNGAL HOUSE, P.O.MUNDUR, NELLIPPOYIL AMSOM
DESOM, KOZHIKODE TALUK.

BY ADVS. SRI.A.T.ANILKUMAR
SMT.V.SHYLAJA

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY
HEARD ON 25-06-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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R.P.(F.C) No.86 of 2011

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Dated this the 25th day of June, 2015

ORDER

The revision petitioner is the petitioner in M.C.No.192/10 on the files of the Family Court, Kozhikode, filed under Section 125 of the Code of Criminal Procedure, claiming maintenance allowance from the respondent. According to the petitioner, she is the legally wedded wife of the respondent and thereby, she is entitled to get maintenance allowance from the respondent under Section 125 of the Cr.P.C. The petitioner is aged 60 years and the respondent is aged 70 years. Their marriage was on 31.05.2008 at the time when the respondent was aged 68 years. They lived together for a short period of twenty months. This marriage is the second marriage of both parties and both having three children each in the first marriage. All the children in the first marriage are grown

up and now the petitioner is living along with her son. According to the petitioner, the respondent neglected her and refused to pay maintenance allowance from 2010 onwards. She has no job or any sources of income. But, the respondent is a coolie worker, earning ₹300/- per day and he is having more than eight acres of land. He is earning a total amount of ₹35,000/- per month from the said properties. She claimed an amount of ₹3,000/- for her monthly maintenance. The respondent resisted the said claim of maintenance; but he admitted that he married the petitioner on 31.05.2008. According to the respondent, the petitioner is having children, who were attained majority and now she is residing along with the son. She has 20 cents of land and a concrete house therein. Besides, she has deposited ₹5 lakhs obtained from her former husband. On 20.5.2010, she has received ₹79,000/- from the respondent. That apart, he is unable to do any work due to his old age and now he is residing along with his son. After considering the rival pleas and the evidence on record, the

court below rejected the claim of maintenance by the impugned order under challenge. The legality of the findings whereby the court below rejected the claim of maintenance is under challenge in this revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent. Both counsel advanced arguments in support of the respective contentions raised in the M.C.

3. Going by the impugned order, it is seen that the marital status of the petitioner is not disputed. It has come out in evidence that the petitioner was in gulf for 13 years. If that be so, as rightly held by the court below, she should have some earnings. Further she has obtained 18 cents of property from her former husband and now she is living along with her son, who has earning capacity. she herself admitted that now she is living under the care and protection of her son.

4. On the other hand, the respondent is aged 70 years and now he is residing at Bangalore along with his son.

According to him, he has lost his earning capacity. The petitioner herself admitted that the respondent is a coolie worker only. Though the petitioner contended that he has large extent of landed property, no evidence has been adduced to substantiate the said contention. In short, the sources of income of the respondent have not been proved in evidence. The petitioner herself admitted that the respondent has given a lump sum amount of ₹79,000/- to her in May 2010. In the absence of evidence to prove the earning capacity of the respondent, who is aged 70 years, the court below is justified in rejecting the claim of the petitioner. I do not find any kind of illegality or impropriety in the impugned order under challenge.

This RPFC is dismissed.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge