

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

RPFC.No. 41 of 2015 ()

AGAINST THE ORDER IN MC 590/2013 of FAMILY COURT,THRISSUR DATED
26-11-2014

REVISION PETITIONER/RESPONDENT:

SURESH KUMAR.
S/O.POTTEKKAT RAMAKRISHNAN, NAMBULLY DESOM, KARAMUKK
KANDASSANKADAVU, THRISSUR, PIN-680 613.

BY ADV. SRI.P.V.CHANDRA MOHAN

RESPONDENT/PETITIONER:

SAVITHRI, W/O.POTTEKKATT RAMAKRISHNAN,
ROSE GARDENS, NO.85, PATTURAIKKAL DESOM,
THIRUVAMBADI P.O., THRISSUR
PIN-680 022.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION
ON 03-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T.RAVIKUMAR, J.

R.P.(F.C)No.41 of 2015

Dated 3rd February, 2015

ORDER

This revision petition is directed against the order dated 26.11.2014 in M.C.No.590 of 2013 of the Family Court, Thrissur. The revisionist was the respondent in the above M.C. and he is the eldest son of the respondent herein/the petitioner therein. The respondent got two sons and three daughters. Still, evidently, she had to approach the court seeking an order for maintenance under Section 125 of the Code of Criminal Procedure. She is an octogenarian suffering from various ailments like kidney trouble, heart trouble, blood pressure, diabetes etc. She filed the aforesaid petition seeking maintenance from the revision petitioner herein at the rate of ₹ 10,000/- per month. It is contended that the revision petitioner/respondent therein is taking private tuition and he is also having immovable properties and he is running a cattle farm and thereby, getting a monthly income of ₹ 50,000/-. The revision petitioner entered appearance and resisted the claim for maintenance. He denied the allegation of conducting tuition classes and running of cattle farm. According to him, he is only rearing two cows and eking out his livelihood by selling the milk. It is his further contention

that his wife is a cancer patient and his son is a student. It is the further contention that after the death of father the respondent-mother has been taking the income from the property consisting of 1 acre and 58.5 cents of garden land and 2 acres and 14.5 cents of paddy field. At the same time, it is admitted by him that he is residing in the family house. It is also admitted by him that for the past about 15 years or thereabouts the respondent has been living with his younger brother. It is also his case that the mother has filed O.S.No.2160 of 1998 before the Munsiff Court, Thrissur for getting vacant possession of the family house wherein he is residing and that the said suit was dismissed. The appeal filed against the judgment and decree in the suit was also subsequently dismissed. It is further submitted that now, O.S.No.24 of 2013 for partition filed by the younger brother of the petitioner is pending. Though such contentions were raised before the Family Court the Family Court rightly formulated only following points for consideration:-

- “(1) Whether the petitioner is unable to maintain herself ?
- (2) Whether the respondent has neglected to pay maintenance to the petitioner ?
- (3) Whether the petitioner is entitled to get any maintenance, if so, what is the quantum ?”

2. To prove her claim for maintenance the respondent herein got herself examined as PW1 and got marked Exts.P1 to P5. The evidence on the side of the revision petitioner consists of his own oral evidence as RW1 and Ext.D1. The Family Court on evaluation of the evidence on record both oral and documentary arrived at the conclusion that the respondent therein/petitioner herein is liable to maintain his mother. It is further found that the fact that she is presently maintained by the other son is not a reason for the petitioner to claim for his absolution from maintaining his mother. Taking into account the capacity of the petitioner the Family Court fixed ₹ 3,000/- as monthly maintenance. The captioned revision petition has been filed challenging the said order.

3. I have heard the learned counsel for the revision petitioner.

4. Admittedly, the revision petitioner is the eldest among the two sons of the respondent and that the respondent has been maintained for the past 15 years or thereabouts by the younger son. The revision petitioner did not have a case that he has been effecting any payment for the maintenance of the respondent during the aforesaid period.

Admittedly, she is an octogenarian suffering from various ailments such as kidney trouble, heart problems, blood pressure, diabetes etc.. In such circumstances, it cannot be said that she is not required any amount for treatment. At this age with the aforesaid diseases it cannot be said that the respondent is able to maintain herself. The petitioner is admittedly residing in the Tharawad house which is situated in a property having an extent of 1 acre and 58.5 cents. The petitioner has produced Ext.D1 dated 22.11.1995 to show that a settlement has been arrived at and it contained certain terms and conditions. At the same time, the petitioner himself would admit the fact that the settlement had not worked out. In such circumstances, obviously, he is still residing in the Tharawad house and even according to him, there are 79 coconut trees standing in the property where he is living. Even otherwise, he is an able bodied person and the eldest son of the respondent. At the fag end of her life, the petitioner cannot be permitted to wriggle out of the pious obligation and liability to maintain his mother especially, considering the position that the petitioner himself admitted the fact that for the last fifteen years the mother has been taken care of by the younger son. Considering the age and ailment of the respondent I do not find any illegality in the finding of the Family Court that the respondent herein/the petitioner therein is unable to maintain herself and that the revision petitioner is liable to give

maintenance to the mother/the respondent herein. Now, what is to be considered is whether the amount fixed by the Family Court requires an interference in exercise of the revisional jurisdiction. The amount fixed by the Family Court is only ₹ 3,000/- per month. Taking into account the fact that the petitioner is residing in the Tharawad house and he is an able bodied person and he is having a property of 58.5 cents I do not find any reason to hold that the amount of maintenance fixed by the Family Court is exorbitant warranting interference. In view of the discussion as above, I have no hesitation to hold that the impugned order does not suffer from any illegality warranting interference invoking the revisional jurisdiction. The revision petition is liable to fail and accordingly, it is dismissed.

Sd/-
C.T.RAVIKUMAR
Judge

TKS

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P.S. to Judge