

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

RPFC.No. 97 of 2015 (E1)

AGAINST THE ORDER IN MC 79/2007 of FAMILY COURT, PALAKKAD

REVISION PETITIONERS/RESPONDENTS:

- 1. VENUGOPALAN, S/O. MUTHU,
AGED 40 YEARS, DRIVER,VALLUVAR ELECTRICALS,
IIND BY PASS ROAD, VELUR P.O, NAMAKKAL, TAMIL NADU.**
- 2. M.PRAKASH, S/O.MUTHU,
AGED 38 YEARS, PADMALAYA, SREE COTTAGE INDUSTRIES,
KARIPODE P.O., PALAKKAD DISTRICT.**
- 3. M.SURESH, S/O.MUTHU, AGED 34 YEARS,
CHATHANAMKULAM LINE, EDATHARA P.O, PALAKKAD TALUK.**

**BY ADVS.SRI.JACOB SEBASTIAN
SRI.S.SANTHOSH KUMAR (BALARAMAPURAM)**

RESPONDENT(S)/PETITIONERS:

- 1. MUTHU, S/O.CHMIYAR, AGED 76 YEARS,
CHERUMPURAKKAL, AATTUPURAM, EDATHARA P.O
PALAKKAD DISTRICT.**
- 2. BHARGAVI, W/O.MUTHU,
AGED 65 YEARS, CHERUMPURAKKAL, AATTUPURAM,
EDATHARA P.O, PALAKKAD DISTRICT.**

**R1-2 BY ADV. SRI.SAJAN VARGHEESE K.
R1-2 BY ADV.SRI.LIJU. M.P**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
26-05-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

OKB

K.HARILAL, J.

R.P(FC). No.97 of 2015

Dated this the 26th day of May, 2015.

O R D E R

The petitioners are the respondents in M.C. No.79/2007 on the files of the Family Court, Palakkad. They are the children of the respondents herein. The above M.C. was filed by the respondents claiming maintenance allowance under Section 125 of the Code of Criminal Procedure. According to them, they are aged 76 and 68 years respectively and they are unable to maintain themselves as they have no sources of income. Whereas their sons, who are the revision petitioners herein, are earning sufficiently and they have sufficient means to pay maintenance allowance to them. The first and the second revision petitioners are employed and the third revision petitioner is doing business. Hence they claimed maintenance allowance from the revision petitioners.

2. The first and second revision petitioners were

absent and they were set ex parte in the trial court proceedings. The third revision petitioner alone contested the claim of the respondents on merits. According to the third revision petitioner, the first respondent owns 77 cents of land in Mankara village and he has an annual income of not less than Rs.30,000/- from there. According to him, the first respondent is a real estate broker and he earns an average of Rs.50,000/- to Rs.1,00,000/- per year. In addition to that, he has fixed deposit in a Co-operative bank. He sold 18 cents of paddy field and 35 cents of garden land and deposited the sales proceeds in bank; whereas the third revision petitioner is residing in a rented house with a liability to pay Rs.1,500/- per month. He has no permanent job and he is an autorikshaw driver by profession. He does not get work every day. He has to maintain his wife and a child aged $3\frac{1}{2}$ years. The child is suffering from serious disease from the birth itself.

3. After considering the rival pleas, the court below directed the revision petitioners to pay

maintenance allowance at the rate of Rs.2,000/- to each respondents. The revision petitioners 1 and 2 shall pay Rs.875/- each and the third revision petitioner shall pay Rs.250/-. The legality of the entitlement of maintenance allowance and the correctness of the quantum fixed by the court below are under challenge in this revision petition.

4. Heard the learned counsel for the revision petitioners and the learned counsel for the respondents.

5. The paternity of the revision petitioners is not disputed. Needless to say, they are liable to pay maintenance allowance to the respondents, if the respondents are unable to maintain themselves. The revision petitioners 1 and 2 were absent and they were set ex parte. It is the case of the third revision petitioner, who contested the case on merit, that the first respondent has enough bank deposit. To prove the contention that the first respondent had landed properties and he sold away the same, it is seen that the third revision petitioner had produced Exts.D1 to

D6. In paragraph 10 of the impugned order, the court below has meticulously considered Exts.D1 to D6 and arrived at a finding that even though the first respondent had some landed properties, he had sold away the said properties much earlier and Exts.D1 to D6 are not sufficient to arrive at a finding that the first respondent has bank deposits as alleged by the third revision petitioner. Though the third revision petitioner has contended that the first respondent has bank deposits in different banks, no evidence has been adduced to substantiate the said contention. So the court below can be justified in rejecting the contention that the first respondent has bank deposits and he is able enough to maintain himself and the second respondent from the income derived from such deposits. In that view of the matter, I find that there is no illegality or impropriety in the finding that the respondents are entitled to get maintenance allowance from the revision petitioners.

6. What remains to be considered is the quantum of maintenance allowance determined by the court

below. It has come out in evidence that the first revision petitioner is employed as a driver in an exporting establishment and he is getting Rs.8,000/- per month and the second revision petitioner is employed as a supervisor in a soap factory and he is getting Rs.10,000/- per month. As rightly noted by the court below, the above evidence of P.W.1 stands unchallenged. That apart, the said evidence was supported by the third revision petitioner, who was examined as R.W.1.

7. The third revision petitioner contended that he is an autorikshaw driver by profession. The first respondent, on the other hand, contended that he is a contractor who owns two tippers and he is an agent of 60 tipper lorries also and his monthly income would come to Rs.50,000/-. But no evidence had been adduced to substantiate the said contention. Going by the petition, the alleged income of the third revision petitioner is Rs.15,000/- only. As rightly noted by the court below, from the evidence adduced by the first respondent it cannot be held that the third revision

petitioner is an affluent person as alleged by the first respondent. Even if his version that he is an autorikshaw driver by profession is correct, he can pay Rs.250/- per month to his parents as maintenance allowance. In the above view of the matter, I find that the quantum of maintenance allowance determined by the court below with respect to all the revision petitioners is just and proper warranting no interference under revisional jurisdiction.

This R.P(FC). is dismissed.

Sd/-
K. HARILAL, JUDGE

okb.