

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

RPFC.No. 252 of 2015 ()

MC 429/2013 of FAMILY COURT, ATTINGAL

PETITIONER/PETITIONER:

RENUKA, AGED 55 YEARS
D/O. SARASAMMA, PARAKKAUDI VEEDU, KOONTHALLOOR
CHIRAYINKEEZHU, KIZHUVILAM VILLAGE
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS/RESPONDENT & STATE:

1. K.R.JAYADEVAN
S/O. RAGHAVAN, INDIRA VILASOM, AYIROOR
VARKALA, THIRUVANANTHAPURAM - 695 141.

2. STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R1 BY ADV. SRI.M.R.RAJESH
R2 BY PUBLIC PROSECUTOR SRI.JIBU.P.THOMAS.

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 28-07-2015, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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K.HARILAL, J.

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R.P.(FC) No.252 of 2015

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Dated this the 28th day of July, 2015

ORDER

The revision petitioner is the petitioner in M.C.No.429/2013 on the files of the Family Court, Attingal. She is the legally wedded wife of the 1st respondent herein. The above M.C was filed claiming maintenance allowance under Section 125 of the Code of Criminal Procedure from the respondent on the allegation that he has neglected her and refused to pay maintenance allowance from 08.11.2009 onwards. According to her, she has no job or any other sources of income and she needs ₹5,000/- per month to meet her living costs.

2. The respondent admitted the marriage; but he contended that he is not liable to pay maintenance allowance to the petitioner as he has no means to pay maintenance allowance and he is aged and ailing due to

various old age diseases. It is also contended that the petitioner herself deserted the respondent without discharging her duties as a wife. The petitioner is having sufficient income from various avocations and by working under NREGA scheme. After considering the rival pleas and the oral evidence let in by PW1, PW2 and CPW1, the court below rejected the claim for maintenance on a finding that the petitioner is not entitled to get maintenance allowance from the respondent. The legality of the denial of maintenance allowance is under challenge in this revision petition.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

4. The learned counsel for the petitioner advanced arguments assailing the findings whereby the court below rejected the claim for maintenance. According to him, the court below went wrong by finding that the burden of proof as regards the means is on the petitioner. The sum and

substance of the argument is that the court below failed to consider the evidence of PW1, PW2 and CPW1 in its correct perspective and rejected the claim for maintenance on the basis of the evidence of PW2 alone.

5. Per contra, the learned counsel for the respondent advanced arguments to justify the findings under the impugned order. According to him, the burden is heavy on the petitioner to prove that the respondent has sufficient means. It is also contended that the petitioner deserted the respondent and left the company of the respondent on her own volition when she realised the fact that he was a bankrupt. So also, it is contended that the petitioner is able enough to maintain herself as she is working in NREGA.

6. In view of the submissions at the Bar, the question that arises for consideration is, whether the court below can be justified in declining the prayer for maintenance allowance? The marital status of the petitioner is not

disputed and according to her, the respondent refused to pay maintenance allowance from 08.11.2009 onwards. Going by the impugned order, it is seen that no evidence was forthcoming to show that he has been paying maintenance allowance to the petitioner after 2009. The respondent's case is that he has no means to pay maintenance allowance. But, going by the deposition of CPW1, it is seen that he himself admitted that he was an agriculturist from the very beginning and the agricultural income is his main earnings. So also, he himself admitted that he had sold away property worth ₹3,90,000/-. Going by the deposition of CPW1, his case is that, earlier, there was sufficient income from the agricultural activities and now the income from the agricultural activities has been reduced to 1/8th of earlier income. No medical evidence has been adduced to show that he is totally disabled to do his agricultural activities.

7. On an overall appreciation of evidence, I am unable

to arrive at a finding that he is a man of no means. But, Going by the impugned order under challenge, it is seen that the claim was rejected on the basis of a finding that the petitioner is a sponsored litigation of PW2. The court below, without appreciating the evidence of PW1 and CPW1, relied on the evidence of PW2 and interpreted in such a way that PW2 is the man behind the litigation in this petition. Even though she was residing separately and the respondent refused to pay maintenance allowance from 2009 onwards, I find that the claim for maintenance allowance will not be barred by limitation and she is not precluded from filing a petition for maintenance in the year 2013. The Family Court is seen inspired by the evidence of PW2 alone. Though the respondent contended that the petitioner is able enough to maintain herself and she is working under NREGA, no evidence had been adduced to substantiate the said contention except his oral assertion. The burden is heavy on the respondent to show that the

petitioner is able enough to maintain herself. The burden has not been discharged satisfactorily.

8. In the above analysis, I find that the court below has not considered the matter in issue involved in the maintenance case in its correct perspective, in view of the legislative object under Section 125 of the Cr.P.C. In the above view, I find that the matter deserves to be remanded back for fresh consideration. The impugned order will stand set aside and the matter is remitted back to the trial court for fresh consideration and the Family Court shall pass order afresh, after affording sufficient opportunities to both parties to adduce evidence. The parties shall appear before the Family Court on 7th September, 2015.

The revision petition is disposed of accordingly.

Sd/-
K.HARILAL, JUDGE.

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P.A to Judge