

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

R.P(FC).No. 313 of 2014

THE ORDER IN M.C. No.287/2010 OF FAMILY COURT, THIRUVALLA DATED 02-07-2013

REVISION PETITIONER(S)/RESPONDENT:

**SUJATHA, D/O. KARUNAKARAN,
ARYALUNILKUNNATHIL, VALLICODE VILLAGE,
VALLICODE.P.O, KOZHENCHERRY TALUK,
NOW RESIDING AZT MATTAPPALLIL HOUSE, KARIMUGAL,
PUTHENCROUZ.P.O, ERNAKULAM.**

BY ADV. SRI.P.SREEKUMAR

RESPONDENT/PETITIONER:

**KARUNAKARAN, S/O. KESAVAN,
ARYALUNILKUNNATHIL, VALLICODE VILLAGE,
VALLICODE.P.O, KOZHENCHERRY TALUK - 683 631.**

**R1 BY ADVS. SRI. JACOB P.ALEX
SRI. JOSEPH PALEX**

**THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON
25-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

WW

C.T. RAVIKUMAR, J.

R.P.(FC) No.313 of 2014

Dated this the 25th day of March, 2015

ORDER

This revision petition unravels the sad plight of a nonagenarian who had to approach the Family Court, Thiruvalla seeking maintenance from the daughter to whom he gifted 50 cents of property reserving his life interest. In M.C.No.287/2010 filed by him in that regard the revisionist-daughter was the respondent. This revision petition has been filed challenging the order dated 02.07.2013 of the Family Court, Thiruvalla in M.C.No.287/2010.

2. The respondent filed the said petition under Section 125 of the Code of Criminal Procedure claiming maintenance from the revision petitioner, the daughter. On due process, the revision petitioner entered appearance and resisted the claim of the respondent. Evidently, the stand of the revision petitioner is that she is not having any legal or moral obligation to maintain the respondent. To substantiate their rival claims evidence was adduced by both sides. The respondent herein got himself examined as PW1 and got marked as Exts.A1 to A3. On the side

of the revision petitioner herein she was examined as DW1 and got marked Exts.D1 to D3. After careful analysis of the evidence, the Family Court found that the revision petitioner is bound to maintain her father, the respondent herein and consequently directed her to pay a monthly maintenance of Rs.2,000/- from the date of petition, ie, from 27.11.2010 onwards. This revision petition is filed challenging the said order.

3. I have heard the learned counsel for the revision petitioner and also the learned counsel appearing for the respondent.

4. The respondent herein filed M.C.No.287/2010 mainly taking up the following contentions. The revision petitioner herein is his only daughter and though she is having sufficient means to maintain him, she is neglecting to do so. Owing to dotage and ailment, he is not in a position to take care of himself and there is none to attend his needs. The only son of the respondent is now employed abroad and he is assisting him financially to some extent. At the same time, that is not sufficient to meet his day-to-day needs and treatment expenses. Ext.A1 produced is a prescription from Kottackal Aryavaidyasala. Exts.A2 and A3 are the cash receipts relating treatment

expenses. They were undoubtedly go to show that he is afflicted with the diseases associated with old age and that he is undergoing the treatment. The revision petitioner has admitted that her father executed a settlement deed in her favour in respect of 50 cents of property reserving his life interest thereon. It is also stated therein that the old house situated thereon has now been renovated and she has also planted the said property with rubber trees. It is the contention of the revision petitioner that the respondent is taking the entire yield from the property. She would further state that a civil dispute is pending between herself and her brother Sudharshanan and that the maintenance case was filed by her father solely at the instigation of her brother Sudharshanan. The revision petitioner had also stated that she got no source of income. It is her further contention that her husband used to send only Rs.3,000/- per month and out of it, she has to pay Rs.1,500/- per month towards the rent of the building wherein she is presently residing. At the same time, she would admit the fact that she was working in Delhi; but she disputed the averment that she got a fixed deposit of Rs.10 lakhs. She would further depose that she availed a loan of Rs.3 lakhs for the education of her daughter

and she is finding it difficult to effect repayment of the same. In short, the contention of the revision petitioner was that the respondent is not entitled to claim maintenance from her and she is not liable to maintain her father - the respondent. It is after considering such rival contentions and the evidence adduced by both the parties in tune with their rival pleadings that the Family Court passed the impugned order.

5. The respondent who is the father of the revision petitioner is presently aged 93 years. There is nothing on record to show that he is having any independent source of income apart from the property which has already been settled in favour of the revision petitioner leaving the life interest. Evidence of the revision petitioner itself would reveal that it was she who planted rubber trees in the said property. However, there is no evidence which would reveal that such trees are presently yielding. That apart, the revision petitioner who was living in that property along with the respondent for quite a long time did not adduce any evidence to show that yielding trees are available in the property and the respondent herein deriving income from them. In such circumstances, merely because the respondent has retained his life interest it cannot be said that he is deriving

income out of it. At the same time, it is true that even according to the evidence adduced by the respondent, the revision petitioner is not presently employed. At the same time, it is the case of the respondent that she was employed in Delhi and she is a qualified nurse. The learned counsel for the revision petitioner submitted that in the light of the decision of this Court in **Chakkingal Achuthankutty Nair and Others v. Chakkingal Seethakutty Amma [2014 (4) KHC 186]**, in a case where the claim for maintenance by mother against her daughter before ordering maintenance in favour of a father or mother against a married daughter, Court is bound to satisfy that the concerned daughter got sufficient means of her own means or income independent of her husband. It is contended that in this case, the said aspect was not at all considered. In the said circumstances, this impugned order is liable to be interfered with on that sole ground, it is contended by the revision petitioner. On the contrary, the learned counsel for the revision petitioner submitted that a careful scanning of the interim order would reveal that in fact the said aspect was also considered by the Family Court. It is evident from the impugned order that all the relevant aspects were duly considered by the Family Court

before arriving at the conclusion that the revision petitioner is liable to maintain the respondent herein and directing her to pay maintenance at the rate of Rs.2,000/- per month. It is to be noted that the respondent is now aged 93 years is having one daughter viz., the revision petitioner and one son who, admittedly, has been assisting his father financially within his capacity. He is working abroad. The respondent who is ailing from diseases is not in a position to meet his treatment expenses as also daily needs solely with the assistance of the son. Obviously, he is now living lonely and there is none in the house to attend his needs at his old age. In such circumstances, considering his age, there can be no doubt that he require the assistance of somebody to attend his needs. Annexure-A1 to A3 would show that he is taking ayurvedic treatment. A careful scanning of paragraph 10 and 11 of the impugned order would reveal that virtually, the question whether the revision petitioner could be said to be capable of maintaining her father independent of the income of her husband was considered. It is her contention that she had availed a housing loan besides an education loan. It cannot be presumed that the banking institutions advanced the loans without ascertaining her

repaying capacity. When the revision petitioner herself admitted the fact that she has availed such loans, the only presumption which could be drawn is that she is having repaying capacity. No evidence was adduced by her to establish that it was without ascertaining any such aspect that the banks advanced loans to her. The revision petitioner has also admitted the fact that she had been employed in Delhi as a nurse. It was consideration of such aspects that constrained the Family Court to arrive at the conclusion that the revision petitioner is capable of maintaining the respondent. Taking note of the aforesaid circumstances, I do not find any reason to hold that the order passed by the Family Court suffers from any infirmity or illegality warranting an interference by this Court in exercise of revisional powers. There cannot be any doubt that respect to the aspect that in order to interfere in exercise of the revisional jurisdiction, the revision petitioner has to make out a case of perverse appreciation of evidence or that the impugned order is infected with patent error of law. In this case, the impugned order does not suffer from any such illegality or infirmity. In the result, I do not find any reason to interfere with the order passed by the Family Court. The impugned order to the extent it orders, the

revision petitioner to pay an amount of Rs.2,000/- per month to the respondent. At the same time, it is to be noted that the revision petitioner was directed to pay the monthly maintenance at the aforesaid rate from 27.11.2010 onwards. No specific reason has been assigned in the order for directing the revision petitioner to pay monthly maintenance at that rate from the date of the petition. The impugned order was passed only on 02.07.2013. From the evidence on record which has been discussed in detail in the impugned order it is evident that though with difficulties, the respondent was able to pull on his life. It is admitted by the respondent himself that his son had been rendering financial assistance to him in accordance with his financial ability.

6. In such circumstances, in the absence any specific reason assigned by the Family Court for ordering payment of maintenance from 27.11.2010 I am of the view that this impugned order, to the said extent, requires interference and modification. In the result, while maintaining the finding of the Family Court that revision petitioner is also liable to maintain the respondent father and also the direction to pay maintenance to him at the rate of Rs.2,000/-, the direction to pay monthly

maintenance from 27.11.2010 is set aside and it is ordered that the petitioner is liable to effect payment only from the date of the order, ie with effect from 02.07.2013.

This revision petition is allowed in part, as above.

JV

sd/-
C.T. RAVIKUMAR,
JUDGE