

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

RPFC.No. 410 of 2014 ()

M.C 301/2013 of FAMILY COURT, NEDUMANGAD DATED 09-07-2014

REVISION PETITIONER(S)/RESPONDENT:

GIRIKUMAR, AGED 50 YEARS,
S/O.APPUKUTTAN, REENALAYAM QUARTERS, PANAMARAM P.O.
WAYANAD.

BY ADV. SRI.BIJU .C. ABRAHAM

RESPONDENT(S)/PETITIONERS:

1. SHAILAJA KUMARY, AGED 47 YEARS
D/O.LEELA, THERIVILA PUTHEN VEEDU, THERIVILA
PERUMPAZHUTHOOR P.O.-695126.

2. GEETHU,, AGED 18 YEARS
D/O.SHAILAJA KUMARY, THERIVILA PUTHEN VEEDU, THERIVILA
PERUMPAZHUTHOOR P.O.-695126.

BY ADVS. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.
SRI.GOVIND PADMANAABHAN
SRI.AJIT G.ANJARLEKAR

THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR
ADMISSION ON 01-06-2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

STU

K.HARILAL, J.

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R.P.(F.C) No.410 of 2014

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Dated this the 1st day of June, 2015

ORDER

The revision petitioner is the respondent in M.C.No.301/2013 on the files of the Family Court, Nedumangad, filed by the respondents herein, who are the wife and daughter of the petitioner herein, under Section 125 of the Cr.P.C, claiming maintenance allowance. According to the 1st respondent, she is the legally wedded wife of the petitioner and the 2nd respondent is the daughter born in that wedlock. Subsequently, the petitioner has neglected to maintain them and refused to pay maintenance allowance. The 1st respondent is unable to maintain herself and the 2nd respondent; whereas the petitioner is a mason by profession, getting monthly income of ₹24,000/-.

2. The petitioner filed an objection contending that the 1st respondent is not legally wedded wife of him. The

paternity of the 2nd respondent is also denied. It is also contended that a marriage agreement was registered before the Vellarada Sub Registry Office due to the threat on the part of the Police Officers only. He had no sexual relationship with the 1st respondent. He is not liable to pay maintenance allowance to the respondents. After considering the rival plea, the court below directed the petitioner to pay maintenance allowance @ ₹3,000/- to the 1st respondent and ₹2,500/- to the 2nd respondent from the date of petition. The legality of the entitlement of maintenance allowance and the correctness of the quantum determined by the court below are under challenge in this revision petition.

3. The learned counsel for the petitioner advanced arguments challenging the findings whereby the court below found that the 1st respondent is the wife of the petitioner and the 2nd respondent is the daughter born in the said wedlock. The learned counsel mainly focused on the point that the marital status of the 1st respondent as

legally wedded wife of the petitioner and the paternity of the 2nd respondent were specifically disputed in his objection. But, the court below went wrong by arriving at a finding that the marital status of the 1st respondent and paternity of the 2nd respondent are not disputed and issues were framed and determined on the basis of the said mistaken impression. No opportunity had been given to adduce evidence to substantiate the denial of the marital status of the 1st respondent.

4. Per contra, the learned counsel for the respondent advanced arguments to justify the findings whereby the court below found that the 1st respondent is the wife of the petitioner and the 2nd respondent is the daughter born to him in that wedlock.

5. Going by the impugned order, apparently, it is seen that as rightly submitted by the learned counsel for the petitioner, the learned Judge has made an observation that the marital status of the 1st respondent and paternity of the 2nd respondent are not disputed. But, in the objection filed

by the petitioner, it is seen that he has specifically disputed the marital status of the 1st respondent in Paragraph No.1 and the paternity of the 2nd respondent in Paragraph No.6.

6. In the above view of the matter, I am inclined to accept the arguments advanced by the learned counsel for the petitioner. The court below has misconceived the pleadings and thereby omitted to consider the matter in issues which would determine the right to maintenance. In this analysis, the impugned order is liable to be set aside at the threshold and I do so. The matter is remitted back to the trial court for fresh consideration, after giving an opportunity to adduce evidence to both parties and pass orders afresh accordingly. The parties shall appear before the Trial Court on 30.06.2015.

The revision petition is disposed of accordingly.

**Sd/-
K.HARILAL,
JUDGE.**

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P.A to Judge