

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.4830 of 2017

ORDER :

The petitioner-Allipeddi Venkata Reddy herein and his brother Sathi Reddy are the two respondents-sons of the M.C.No.10 of 2012 petitioners by name Allipeddi Ram Reddy(since died) and Allipeddi Parvathamma. The M.C.No.10 was filed u/ sec.125 CrPC seeking maintenance from them with the averments that they gave their agricultural lands by keeping Ac.7.01 gts. for their maintenance, to the two sons and due to old age, later on the promise of Venkata Reddy to see their welfare till their death, they have even given him the extent of Ac.7.01gts. and after that he necked them out of his house and even other son-Sathi Reddy also necked them out on the reason that they gave excess land to Venkata Reddy.

In reply to that, the contentions of the counter filed by Venkata Reddy (Sathi Reddy who is working as a Government Teacher did not file any counter) by denying the averments of the maintenance petition are that their mother gifted Ac.15.20gts to Sathi Reddy through registered gift deed No.2397/ 2001, dt.16.06.2001 and they are still holding their agricultural lands at Polumalla village and their father is pattadar and possessor of lands to the extent of Ac.5.19gts. as is evident from his pattadar passbook and title deed No.76732 with patta No.7 so also the 2nd petitioner for the lands to the extent of Ac.19-10gts., evidenced through pattadar pass book and title deed No.78915 with patta

No.158. In the year 1995, on the demand of their parents and due to the disputes with his wife, at the instance of the village elders, he has provided northern side portion of his residential house with 4 rooms to them for separate residence while retaining southern side house portion with two rooms for himself. Subsequently, also, they again raised disputes. Consequent to that he has handed over the entire house at Nemmikal to them and was residing in a separate house since the year 2002. The petitioners(parents) and the 2nd respondent(Sathi Reddy) before elders, agreed to execute gift deed in favour of him for the equal share of lands and a simple gift deed was also executed but subsequently resiled. There is no question of necking them out from his house. It is further submitted that he has no sufficient means to pay Rs.5,000/- p.m. to them for he is hardly eaking out his livelihood on his meager income and his son and daughter are studying and recently he also performed marriage of his daughter and is highly indebted.

The trial Court, on MC petitioners' side examined 2nd petitioner(their mother) as P.W.1 including two other witnesses(P.Lingareddy as P.W.2 and R.Narsaiah as P.W.3), and on respondents' side, the MC 1st respondent-Venkat Reddy deposed as R.W.1 and one B.Amruthamallu as R.W.2.

The learned Magistrate after enquiry held that the evidence of R.W.1 is unbelievable as during his cross-examination he admitted that he got registered land of his mother to an extent of Ac.4.39gts. in Sy.No.254(Ac.3.01gts) and Sy.No.255(Ac.1.38gts)

basing on RRO mutation without the knowledge of the petitioners and made the gift deed in favour of his wife and son and further voluntarily states that he purchased the above land from the 2nd respondent. Further the P.W.1 during cross-examination admitted that she gifted Ac.15-20gts., in favour of 2nd respondent under registered gift deed No.2793 of 2001 and further admitted that her husband was standing as pattadar for AC.5.19gts. Her contention is that they gave Ac.5.19gts. and Ac.11.00gts. to respondents equal and kept Ac.7.09gts. in their possession for maintenance which was taken by the 1st respondent-the quash petitioner with a promise to maintain them. Further held that the evidence placed by both sides clearly shows that both parties do not have good relations for the last 20 years. Further more as their welfare was not seen in the hands of respondents that made them to reside in their share household. The suggestion of the learned counsel for the respondents that the respondents did not make any galata and the petitioners themselves left their house is denied by the P.W.1 supports the contention of the petitioners. Generally no parents left their son's house or even when they had two sons they shuttle in between both the houses as their ages tends towards the same due to love and affection. The petitioners have also succeeded in proving the fact through the elders of P.Ws.2 and 3 that the 1st respondent made efforts to obstruct the petitioners in leasing out their land to one P.Balaiah, by filing application before Tahasildar, Noothankal to change the names of petitioners in

pattadar passbooks. In view of the above evidence on record, the learned Magistrate allowed the petition granting monthly maintenance of Rs.5,000/- to each petitioner by the respondents on 5th of every month. The present petitioner-MC 1st respondent even went unsuccessful in the revision before court of sessions at Suryapet in Crl.R.P.No.45 of 2014, dt.31.08.2016.

The contentions in the quash petition as well as the submissions of the learned counsel for the petitioner during the course of hearing are that that the orders passed by the learned Magistrate are without proper consideration of the material on record, baseless and unsustainable and they are not entitled to maintenance having sufficient means and affluent properties and otherwise his brother is in better position having substantiated properties from his mother and also a public servant bound to maintain and fixing liability at par with his brother of him to maintain them is unsustainable. Thereby sought for setting aside the impugned orders by relieving him from payment of any maintenance separately to his parents. It is also the submission that his father pending the matter died and his mother is residing with his brother who is bound to maintain.

Whereas, it is the submission of the learned counsel for the respondent that the concurrent findings no way requires interference by this Court while sitting against and sought for dismissal.

The fact that they succeeded to some of the properties of their parents being two sons not in dispute. The fact that their father, one of the petitioners of the maintenance case, died pending the lis before attaining finality because of the pendency of the revision and subsequent to it the quash petition is not in dispute. It is only they have to maintain their mother. Even the evidence on record shows the petitioner also one of the beneficiaries of some lands of his mother. No doubt, the original amount of Rs.5,000/- each awarded is to the father and mother and so far as the Rs.5,000/- p.m. each payable to the parents now to reduce to Rs.2,500/- p.m. each so far as against the quash petitioner-M.C.1st respondent concerned, for the rest of the liability if not equal the mother can claim against the other son.

Having regard to the above and in the result, the Criminal Petition is disposed of. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:06.10.2017

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