

Anitha Vs. Damodaran

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Court : Kerala

Decided On : May-29-2014

Judge : Honourable Mr. Justice P.Ubaid

Appellant : Anitha

Respondent : Damodaran

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID THURSDAY, THE 29^H DAY OF MAY 2014 8TH JYAISHTA, 1936 RPF.C.No. 35 of 2014 () ----- MC. NO.248/2012 OF FAMILY COURT, THALASSERY. PETITIONERS/COUNTER

PETITIONERS:
----- 1. ANITHA, W/O. RAMDAS, AGED 52 YEARS, RESIDING AT CHENECHERI HOUSE, ELAYAVOOR AMSOM, CHALA DESOM, P.O. CHALA EAST, CHALA, KANNUR DISTRICT.

2. ANEESH, S/O.DAMODARAN, AGED 44 YEARS, RESIDING AT SOUMYA NIVAS, EDAKKAD AMSOM, CHIRAKKU TAZHE DESOM, P.O. KIZHUNNA, KANNUR TALUK AND DISTRICT, BY ADVS.SRI.C.P.PEETHAMBARAN, SMT.MINI.V.A., SRI.JENIN JOSEPH. RESPONDENT/PETITIONER:
----- DAMODARAN, S/O. POKKAN, AGED 80 YEARS, RESIDING AT PUNJAYAN HOUSE, PUZHATHI AMSOM, DESOM, P.O.KOTTALI, T.C. MUKKU, KANNUR DISTRICT. BY ADVS. SRI.C.M.NAZAR,

SMT.M.V.ASHA BINDU. THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON2905-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: rs. P.UBAID, J.

----- R.P(FC) No.35 of 2014
----- Dated this the 29th day of May, 2014

ORDER

The 1st revision petitioner herein is the one of the daughters of the respondent, and the 2nd revision petitioner is one of his sons. The respondent (father) has obtained a maintenance order against them from the Family Court, Thalassery in M.C No.248/2012. The amount of maintenance awarded by the trial court is 1,000/- per month, as against the 1st revision petitioner, and 1,500/- as against the 2nd revision petitioner. They are aggrieved by the said order in favour of their father, who is now aged more than 80 years.

2. I heard the learned counsel on both sides and perused the records. When an aged father claims maintenance, the children cannot find any excuse or defence except that the father has his own job or income. But in this case there is absolutely no evidence or material to show that the respondent father has any source of income of his own. One contention raised by the daughter is that the father has not claimed R.P(FC) No.35 of 2014 2 anything from the other daughter. Of course it is for the father to decide or opt from who among the children he should seek maintenance. One of the children cannot decline payment saying that the other is not proceeded against. It is the father's right and privilege to opt, from who among the children he should seek maintenance for his livelihood. Anyway, I find on a perusal of the records that there is no satisfactory evidence in this case to prove the actual income of the 1st revision petitioner. Of course her husband is affluent, and her son is also employed somewhere. That she has attractive income, or her son has income of his own, cannot be a ground to direct her to pay maintenance to her father. She can be directed under Section 125 Cr.P.C only if she has her own job or income. It has come out in evidence that she has some 15 cents of property of her own. But it is not definitely known what exactly is her income from the property.

3. In the above circumstances, I feel that a slight modification in the order as against the 1st petitioner can be made in revision. However, as regards the son, who is the 2nd revision petitioner, I find no reason at all for interference or to reduce the amount of maintenance. With the said slight R.P(FC) No.35 of 2014 3 modification in the order as against the 1st revision petitioner this revision can be allowed in part. In the result, this revision petition is allowed in part, confirming the maintenance order as against the 2nd revision petitioner herein, but modifying the order as against the 1st revision petitioner, that the amount of maintenance payable by her under the impugned order shall be 500/- per month. In all other respects including due date from which payment shall be made, the trial court order is confirmed. P.UBAID JUDGE ab

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