

Saidu Mohammed Vs. Subaida and Another

Saidu Mohammed Vs. Subaida and Another

SooperKanoon Citation : sooperkanoon.com/1152764

Court : Kerala

Decided On : Jun-18-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Saidu Mohammed

Respondent : Subaida and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE P.UBAID WEDNESDAY, THE 18TH DAY OF JUNE 2014 28TH JYAISHTA, 1936 RPF.No. 173 of 2007 () -----
AGAINST THE

ORDER

IN MC3342006 of FAMILY COURT, PALAKKAD REVISION
PETITIONER(S)/REVISIN PETITIONER:
----- SAIDU MOHAMMED,
S/O.ABDULLAH, PUTHENTHARA, MELARCODE, ALTHUR TALUK PALAKKAD
DISTRICT. BY ADVS.SRI.K.K.JAYASOURYAN
SRI.P.M.KUNJUMOIDEENKUTTY SRI.P.A.MOHAMMED ASHROF SRI.LAL
K.JOSEPH SRI.A.A.ZIYAD RAHMAN RESPONDENT(S): ----- 1.
SUBAIDA, D/O.MUTHUR RAWUTHAR, PUTHENTHARA VEEDU,
THIRUVAZHAYAD, AYILUR NENMARA, CHITTUR TALUK, PALAKKAD
DISTRICT.

2. HASNA (MINOR AGED 1 YEAR), D/O.SAIDU MOHAMMED, PUTHENTHARA VEEDU, THIRUVAZHAYAD AYILUR, NENMARA, CHITTUR TALUK PALAKKAD, REP. BY GUARDIAN MOTHER THE 1ST RESPONDENT SUBAIDA. R1 & 2 BY ADV. SRI.BINOY VASUDEVAN BY ADV. SMT. P.G.BABITHA THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 18.06.2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: sab P.UBAID, J.

----- R.P.F.C No. 173 of 2007 -----

Dated this the 18th day of June, 2014.

ORDER

A maintenance order passed by the Family court, Palakkad under Section 125 of Cr.P.C in M.C No. 334/2006 is under challenge in this revision. The revision petitioner is aggrieved by the direction to pay maintenance to his wife at the rate of Rs.750/- per month, and to the minor daughter at the rate of Rs.500/- per month. The revision petitioner married the first respondent on 20.03.2003, but the matrimony did not last long. In March 2005, the first respondent left the matrimonial home with the child, and since then she has been residing separately from the revision petitioner. Alleging cruelty, neglect and desertion the respondents brought claim before the family court for maintenance under Section 125 Cr.P.C.

2. The revision petitioner entered appearance and resisted the claim for maintenance on the contention that his wife has no reason to live separately and claim maintenance, and that she has her own income from property and otherwise. He also denied the allegations of cruelty and desertion. R.P.F.C No. 173 of 2007 2 3. The trial court conducted an enquiry in the proceedings, and recorded evidence on both sides. The first respondent examined herself as PW1 and the revision petitioner examined himself as CPW1. No document was marked on either side. On an appreciation of the evidence, the trial court found that the first respondent has sufficient reason to live separately from her husband, and that she is not able to maintain herself. Accordingly the impugned order was passed on 28.11.2006.

4. On hearing both sides, and on a perusal of the case records I find no illegality or irregularity or impropriety in the maintenance order passed by the trial court. Of course, it is true that the matrimony did not last long. The first respondent has her own explanation and excuse for the short lived matrimony. Her case is that she had been mentally and physically ill treated by the husband, and she had to leave the matrimonial home with the child in March 2005. She has given evidence substantiating this allegation. The revision petitioner has no explanation why he did not make earnest efforts to bring back his wife. Separation since March 2005 is practically admitted by the revision petitioner. It has come out in evidence that the parties had once reunited on the intervention of some mediators, R.P.F.C No. 173 of 2007 3 but they again fell apart. It is not known why earnest efforts were not made by the revision petitioner to bring his wife back with the child after the second separation. He has no case of he had made payment of anything to his wife and child since the separation. Thus a clear case of neglect stands proved in this case.

5. Now the question is whether the first respondent has any income of her own. Of course, she says in evidence that she is unable to maintain herself, and she has no job, or income of her own. The revision petitioner did not adduce any evidence to prove his case otherwise. He produced some documents before this court pending this revision. But none of these documents is admissible in evidence. If at all those documents could be admitted, the revision petitioner will not be benefited by these documents because these documents will not show that his wife has any definite source of income. Of course, she had for sometime received widows pension from the Panchayath. But his own document will show that it was cancelled in 2006. If at all his wife had some 12 or 13 cents of property, the court cannot find that she has any income of her own, or that she can maintain herself. Anyway there is nothing to show that she is now in possession of such property. I find that the first respondent does not have any job or R.P.F.C No. 173 of 2007 4 income, or source of income, and that she is unable to maintain herself. I find that as a neglected and deserted wife she is entitled to claim maintenance under Section 125 Cr.P.C.

6. I find absolutely no reason for interference in the quantum of maintenance awarded by the trial court. Everybody knows that a lady having a daughter aged 8 or 9 years now cannot live with just Rs.1,250/- per month. The amount was awarded in 2006, but unfortunately decision in the revision was delayed. The child was aged 1 year when claim was made in the trial court. Now she must be aged 8 or 9 years. Much enquiry is not required to find that the child cannot live with just Rs.500/- per month, or the revision petitioners' wife cannot get on just Rs.750/- per month. The amount will have to be modified appropriately in appropriate proceedings, in the changed circumstances. Nobody will say that Rs.750/- per month for a wife and Rs. 500/- per month for a child is exorbitant or excessive. In fact it is inadequate, but enhancement is not being made in the absence of specific claim. I find that the amount awarded by the trial court is quite reasonable, and it does not require any interference. The revision petitioner cannot find any excuse, being an able-bodied person not to pay Rs.1,250/- every month. It does not matter what R.P.F.C No. 173 of 2007 5 his actual income is, and it does not matter that his wife has not produced necessary material to prove his actual income. It is his liability under the law to maintain his wife and child properly and adequately. I find no reason for interference in revision and this revision is liable to be dismissed as merit less. In the result, this revision petition is dismissed as merit less. P.UBAID, JUDGE sab

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com