

P. Elangovan Vs. Pondevaki and Others

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Court : Chennai Madurai

Decided On : Oct-16-2015

Judge : The Honourable Mrs. Justice S. Vimala

Appeal No. : Crl.R.C.(MD)No. 18 of 2015 & M.P.(MD)No. 1 of 2015

Appellant : P. Elangovan

Respondent : Pondevaki and Others

Judgement :

(Prayer: Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, against the order passed in M.C.No.74 of 2012 on the file of the Family Court, Madurai dated 15.09.2014.)

The **only day** in your life, when you cried, your mother was smiling - meaning thereby, except at the time when the child indicates to the world that it has been brought into existence, by crying, the mother will not tolerate the cry of the child during rest of his life. This was the great salute to all the mothers when the former President of India, Dr.A.P.J.Abdul Kalam defined 'Birth Day' to a query raised by the British Broadcasting Corporation.

2. Matha, Pitha, Guru, Theivam, is the phrase admired and appreciated in Indian tradition as Matha (mother) occupies always the first position, in the order of priority in the list of persons to be worshipped.

3. This is a case, where one out of the two sons of the widowed mother, one of the sons (petitioner in M.C.No.74 of 2012), viz. Elangovan, challenges the order of maintenance passed in favour of the mother directing the revision petitioner to pay a sum of Rs.3,000/- to the mother by order dated 15.09.2014. The other son-Rajakumaran and daughter-Elamathy (widowed daughter) have been directed to pay a sum of Rs.3,000/- and Rs.5,000/- per month, respectively, to the mother.

4. The parties are described as per the nomenclature assigned to them in the Trial Court in M.C.No.74 of 2012, for the sake of convenience.

4.1. Pondevaki, the mother, as petitioner, filed the petition under Section 125 Cr.PC claiming maintenance of Rs.21,000/- per month from her sons and daughter. Her husband late Ponraj had been employed in Central Co-operative Bank, Madurai and he died while he was in service on 14.03.1989. At the instigation of the maternal grandmother, the two sons did not maintain cordial relationship with their mother and she was driven out of the home along with the daughter. Retirement benefits were divided into five shares and one share was given to mother-in-law, Kannammal.

4.2. The revision petitioner agreed to rent-out the house and agreed to deposit the rental amount into the bank account of the mother. This agreement was complied with for a few months and later on it was not complied with. She was completely depending upon her daughter, Elamathy.

5. According to the mother, the first son was earning Rs.1,00,000/- per month, the second son is a Software Engineer employed at Canada, earning more than Rs.3,00,000/- per month. The mother claimed that she was not able to maintain herself and as she is under the mercy of her daughter and son-in-law, she must be paid sufficient maintenance.

6. The claim was contested by the Revision Petitioner alone and the other son, who was at Canada, remained exparte. The daughter consented for the grant of maintenance.

7. The claim was resisted on the ground that the mother did not give respect for the father and even while the father was alive; she took away all her belongings and got the daughter married to her brother Chandrasekaran; she did not evince any interest in respect of the two sons; the father died on 14.03.1989 on account of the departure of his wife from his house; the mother was interested only in grabbing the property; as she was causing disturbance to the possession of the house, the first respondent filed a suit in O.S.No.1116 of 2011 seeking an order of injunction; the first respondent has also filed a suit for partition before the Principal Sub-Court, Madurai, in O.S.No.960 of 2012, as the mother was claiming that she would execute documents in suppression of the right of respondents 1 and 2; she also caused impediment in the second respondent getting employment on compassionate ground; it was only the first respondent who was maintaining the paternal grandmother and his brothers; just because, the mother carried the child in the womb for ten months, she cannot attain the status as mother; motherhood lies in bringing the children in an appropriate way by laying foundation for the good future of the children; since the mother did not do anything, the maintenance petition has to be dismissed.

8. Before the Trial Court, the mother was examined as P.W.1 and Exs.P1 to P3 were marked. The first respondent has been examined as R.W.1 and Exs.R1 to R6 have been marked. On consideration of oral and documentary evidence, the Trial Court ordered that the two sons shall pay a sum of Rs.3,000/- each, to the mother. The consent of the daughter to pay a sum of Rs.5,000/- to the mother has been recorded. This order is under challenge by the contesting son.

9. Admittedly, (a) the mother is aged 70 during the year 2015; (b) she has taken asylum under the roof of her married daughter, who later became a widow; (c) the rent, which was agreed to be credited to her account, was credited only for a period of 19 months and not thereafter; and (d) until the younger son was 14 years old, she was living along with her sons, daughter and husband.

10. The allegations against the mother are that: (a) her interest was towards the property and not towards the welfare of her sons; (b) against the wish of her husband, she performed the marriage of her daughter with her brother; and (c) she

executed a settlement deed in favour of her daughter while the petition for maintenance was pending.

11. Whether these allegations are true? Even assuming that these allegations are true, whether that would dis-entitle the mother to claim maintenance? These are the two issues to be answered.

12. The allegations against the mother on three counts are found to be interdependent. Even though it is alleged that she performed the marriage of her daughter with her brother without the consent of the father, the evidence reveals that she herself did not attend the marriage of her daughter. As the son-in-law is her own brother, she might have been interested in the marriage. But the fact remains that the will and wish of the daughter is more important than the consent / will of the father. From the evidence, it is evident that nobody from the family of the petitioner attended the marriage. P.W.1 has stated in her evidence that neither she nor her husband or sons attended the marriage. Therefore, the contention that only in order to perform the marriage of her daughter, the mother ran out of the family cannot be correct.

13. The fact that the mother executed the settlement deed in favour of her daughter during the pendency of the maintenance application is not disputed. Even though the daughter is under a legal liability to maintain her mother, still the social outlook towards the concept that mother has to stay, along with the sons only, did not substantially change. She would not have been comfortable in the house of her daughter, because of the perceptions surrounding her stay in her daughter's house. When she had to stay in the daughter's house while the sons were alive, that would certainly made her to feel low in the eye of his son-in-law. Therefore, to earn respect, she might have executed the settlement deed in favour of her daughter. Alternatively, fearing that if the property is taken away from her forcibly, she is likely to loose the asylum available in the house of her daughter, she might have done that. These could be the only two reasons for her to execute the settlement deed in favour of her daughter. That does not dis-entitle her to claim maintenance when it is not shown that there was income from that property and that it was sufficient for her to maintain herself. In fact, in evidence, she has

stated that none of her properties are in her possession and she did not derive any income from any of the properties.

14. In the evidence, it is stated that the revision petitioner is doing business in scrap iron and that the second son is settled at Canada. Till one son was grown up to 22 years and other son was aged 14, the mother has been living only along with her husband, sons and mother-in-law, maintaining the entire family. As age advances, the fear of insecurity also advances and sometimes disputes arise in the family with regard to settlement of properties. That does not mean that the mother is interested only in the properties and not in the interest of her sons.

15. In the year 1976, the chapter on fundamental duty was introduced in the Indian Constitution by amending the Constitution through 42nd Amendment.

15.1. The fundamental duty, as provided in Article 51A(e) is to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. Mahatma Gandhi said Civilisation is that mode of conduct which points out to man the path of duty. A duty is roughly speaking an act which one ought to do, an act, the opposite of which would be a wrong. R.W.M.Dias speaks in different manner, a duty is a species of obligation and defines that, duties are prescriptions of conduct towards the achievement of some end, moral, social or other.

15.2. The meaning of the term duty is: the moral necessity to perform certain actions for no reason other than obedience to some higher authority, without regard to any personal goal, motive, desire or interest.

15.3. Human beings, by nature, are more conscious about their rights than duties. No doubt, human rights are also important as without which life will be incomplete rather miserable. But, India is a country where the concept of duty gains predominance than right. Every human being is expected to perform the duty without corresponding expectation either from the person towards whom duty is performed or from the society to which it is offered. By 'Dharma', what is sought to be achieved is all people should be happy " 'sarva jana sukino bhavanthu'. But,

this happens in imagination than in reality.

15.4. The concept of dharma is wider than the concept of duty. Dharma is a way of transcendence guides us back to our true nature, our original position as loving servants of God. It is appropriate to quote Swami Vivekananda, when he said “ service to humanity is service to God ?, as man himself is considered to be the Avatar of God.

15.5. Therefore, the liability to pay maintenance to the parents is a dharma to be performed than a duty to be performed, as duty is only one aspect of dharma.

15.6. Mahabharatha Quotes that:

- Dharma sustains the society.
- Dharma maintains the social order.
- Dharma ensures well being and progress of humanity.
- Dharma is surely that which fulfils these objectives.

Karna Parva Ch. 69, Verse “ 58 (quoted by Dr. Devidas G.Maley, Assistant Professor, Department of Post-Graduate Studies and Research in Law, Gulbarga University, Gulbarga, Karnataka, - in the Article on 'Concept of Right and Duty')

15.7. The word 'dharma' has such wide meaning as to cover rules concerning all matters, such as, spiritual, moral and personal as also civil, criminal and constitutional law. It gives the precise meaning depending upon the context in which it is used. For instance, when a word 'dharma' is used to indicate the giving of one's wealth for a public purpose, it means charity; when it is referred to giving of dharma to a beggar, it is giving of alms; when it is said that when a case dharma is in favour of the plaintiff, it means law or justice is in his favour; when it is said that it is the dharma of the sons to look after their aged parents, it means duty; when it is said that it is dharma of a debtor to repay the debt to the credit, it means a legal as well as pious obligation; in the case of criminal offence, it means the breach of duty, which is punishable by the State; and when dharma is used in the context of duties and powers of the King, it means Constitutional Law (Raja

Dharma) - (M.Rama Jois Legal and Constitutional History of India (Universal Law Publishing Company Limited, Delhi, 1984) pg.9).

16. The right of the mother to expect the children to maintain is not only statutory right, constitutional right, fundamental right, natural right and moral right, but also the human right. Under such circumstances, the son ought not to have made the mother to approach the Court to make the son realise his duties and responsibilities. Paradoxically the son instead of speaking about his duties and responsibilities has spoken about the duties and responsibilities of the mother, of which he has no authority to speak. It is said that God cannot be present everywhere and therefore, He created mothers. One of the Poet, in recent times, wrote about the case sheet, maintained by a Doctor, touching the delivery of his patient as: the delivery note was the descriptive of everything excepting the pains suffered by the mother during delivery. Delivery is rightly called the second birth of the mother.

17. So far as the quantum of compensation is concerned, the requirement of the mother has to be kept in mind. The claim for maintenance cannot be a match for profit and loss account. It reflects the requirement of a life, who created life for the world. The mother has stated that she is suffering from all kinds of diseases apart from problems due to ageing. At the age of 70, she would not be in a position to earn money. She would not be able to exert her physical labour in cultivating the land. Therefore, it is the duty of the sons to pay appropriate maintenance to the mother.

18. Admittedly, the sons are in possession of houses and lands from which they get income. Even though the daughter has taken the physical care of the mother, she would not be in a position to spend as she has lost her husband. Therefore, the maintenance in terms of money has to be borne out only by the two sons. The second son is stated to be a Software Engineer employed at Canada, earning more than Rs.3,00,000/- per month. He did not even take care to find out why this petition was filed by the mother. He did not even contest the proceedings. By remaining abroad, he will not be in a position to take care of the physical comforts of the mother. Even though it is stated that the revision petitioner herein is earning

more, in the evidence it is stated that he is a daily worker under one Agarwat Seit and therefore he will not be in a position to pay more than Rs.3,000/- per month.

18.1. The daughter has given an undertaking to pay Rs.5,000/- per month towards the maintenance of the mother. But this undertaking was before the death of her husband. Subsequent to that, she has become a widow. Therefore, she may not be in a position to pay Rs.5,000/- per month. Therefore, her liability is reduced to Rs.3,000/- per month.

18.2. The mother has claimed a sum of Rs.21,000/- as maintenance. The meagre amount of Rs.3,000/- per month payable by one son is not sufficient for the maintenance of the mother. Under such circumstances, the son who is earning in lakhs, shall pay a sum of Rs.15,000/- per month to the mother.

19. Even though there is no claim for enhanced maintenance, by the mother, she expressed her requirements during personal hearing to all parties in the Chambers. Considering the: (a) age and necessity of the mother, (b) the financial capacity of the second son, (c) the nature of duties and responsibilities of the children to maintain the parents, (d) nature of Maintenance Proceedings, (e) in order to avoid further litigation and (f) to bring finality to the litigation, the second respondent in M.C.No.74 of 2012 shall pay a sum of Rs.15,000/- per month as maintenance.

20. In the result, the Criminal Revision Case is disposed of, with the observations. Consequently, the connected miscellaneous petition is closed. No costs.

21. The joys of parents are secret and so are their griefs and fears, as said by Francis Bacon must be understood by the children. This Court express the hope that this history should not repeat itself in the family of the Revision Petitioner.

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