

Ayisha K.a vs Ithan

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Court : Kerala

Decided On : Aug-25-2023

Judge : Honourable Dr. Justice Kauser Edappagath

Appeal No. : RPFC/3/2023

Appellant : Ayisha K.a

Respondent : ITHAN

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH
FRIDAY, THE 25TH DAY OF AUGUST 2023 / 3RD BHADRA, 1945
RPFC NO.3 OF 2023 AGAINST THE ORDER DATED 10.11.2022 IN MC
7/2021 OF FAMILY COURT, KALPETTA REVISION
PETITIONER/PETITIONER: AYISHA K.A, AGED 57 YEARS, W/O.
ITHAN, R/AT CHUNDAKKARA HOUSE, THIRRUVANNOOR,
NOOLPPUZHA POST, KALLOOR, WAYANAD-673592. BY ADVS.
BONNY BENNY BEJOY JOSEPH P.J. GOVIND G. NAIR SABU
THOMAS BALU TOM RESPONDENT/COUNTER PETITIONER ITHAN,
AGED 60 YEARS, S/O. ABDUL RAHMAN, CHUNDAKKARA HOUSE,
THIRRUVANNOOR, NOOLPPUZHA POST, KALLOOR, WAYANAD-

673592. BY ADV TONY THOMAS (INCHIPARAMBIL), SMT.S.REKHA, SR.P.P. THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON 25.08.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER

This Revision Petition has been filed challenging the order in M.C.No.7 of 2021 dated 10.11.2022 passed by the Family Court, Kalpetta (for short 'the court below').

2. The revision petitioner is the wife of the respondent. Their

marriage was solemnized on 14.07.1977. Four children were born out of the wedlock. The revision petitioner is now aged 58 years. The respondent is aged 62 years. The revision petitioner filed M.C.No.7 of 2021 at the court below claiming maintenance at the rate of Rs.5,000/- per month from the respondent invoking Section 125 of Cr.P.C. The court below after evaluating the evidence on record and hearing both parties, dismissed the petition, as per the impugned order. The said

order is under challenge in this revision petition.

3. I have heard both sides.

4. The marital status of the parties is not in dispute. The court

below on evaluation of the evidence, especially the evidence of PW2, came to the conclusion that the respondent conducts agricultural operation in the lease hold property measuring 2.83 hectares and he is getting sufficient income from it. In short, the court below came to a definite finding that the respondent has means to maintain the revision petitioner. However, the court below declined the maintenance to the revision petitioner on three grounds:

(1) The revision petitioner is getting a monthly pension of Rs.1,400/-.

(2) The revision petitioner is having properties with a house.

(3) The revision petitioner used to live along with her son, who is financially well off.

5. The respondent being the legally wedded husband of the

revision petitioner, is legally and morally bound to maintain the revision petitioner. The fact that revision petitioner is getting a paltry sum of Rs.1,400/- as monthly pension is not a ground to deny maintenance to her. The revision petitioner may be having properties with a house. But, in the absence of any evidence to show that the revision petitioner is getting any income out of it to meet her expenses that cannot be a ground to deny the maintenance. The fact that the revision petitioner used to live along with her son, who is affluent, is also not a ground to deny the maintenance to the revision petitioner. As

stated already, the respondent is an affluent person. Hence, he is bound to maintain the revision petitioner. Considering the facts that all

the children of the revision petitioner are settled, the revision petitioner is living alone, and she is getting a monthly pension of Rs.1,400/-, I am of the view that a sum of Rs.2,500/- per month is sufficient to meet her monthly expenses. Hence, the respondent is directed to pay monthly maintenance of Rs.2,500/- to the revision petitioner from the date of her petition.

The Revision Petition (Family Court) is allowed. Sd/- DR.KAUSER EDAPPAGATH, JUDGE AS APPENDIX OF RPFC 3/2023 PETITIONER'S ANNEXURES: ANNEXURE.1 TRUE COPY OF THE LETTER SUBMITTED BY THE PETITIONER TO THE POST MASTER ,SULTHAN BATHERY DATED.27.4.2023

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