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Prajeesha, vs Sujala

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable Mr. Justice Anil K.Narendran,Honourable Mr.Justice P.G. Ajithkumar

Appeal No. : Mat.Appeal/422/2019

Appellant : Prajeesha,

Respondent : Sujala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, MAT.APPEAL NO. 422 OF 2019 AGAINST THE JUDGMENT DATED 31.10.2019 IN O.P.NO.635 OF 2016 ON THE FILES OF THE FAMILY COURT, PALAKKAD APPELLANT/PETITIONER: PRAJEESHA, AGED 20 YEARS (MENTALLY HANDICAPPED), D/O T.V.PRAKASAN, THEYYATHANTHODI VEEDU, THANDATHARA, PARALI.P.O, PALAKKAD-678612, REP.BY GUARDIAN -FATHER T.V.PRAKASAN, S/O.VELAYUDHAN, AGED 46 YEARS, THEYYATTANTHODI VEEDU,

THANDATHARA, PARALI.P.O, PALAKKAD-678612. BY ADV RAJESH SIVARAMANKUTTY RESPONDENT/RESPONDENT: SUJALA AGED 39 YEARS, W/O KATHIRVEL, OPP.AGMUPS, KODUMBU.P.O, PALAKKAD-678551. BY ADVS. SAJAN VARGHEESE K. LIJU. M.P THIS MATRIMONIAL APPEAL HAVING COME UP FOR FINAL HEARING ON 10.02.2023, THE COURT ON 28.02.2023 DELIVERED THE FOLLOWING:

JUDGMENT

P.G. Ajithkumar, J.

The claim of a mentally challenged daughter for maintenance from the mother is declined. The daughter is in appeal against that judgment under Section 19(1) of the Family Courts Act, 1984.

2. The appellant is the daughter of the respondent.

The appellant is represented by her father, since she is mentally challenged and incapable, by reason of such mental infirmity, to prosecute the case on her own. Marriage between the father of the appellant and the respondent was separated on 11.06.2003 by a decree of divorce on mutual consent. In terms of the agreement between them, custody of the mentally challenged daughter was entrusted to the father. The appellant attained majority, but she continues to be mentally challenged and remain unmarried. Stating that the father was unable to meet the expenditure of the appellant, who requires periodical treatment, she had filed O.P.No.635 of 2016 before the Family Court, Palakkad. An amount of Rs.5,000/- per

month was claimed towards maintenance from the respondent. The respondent opposed the claim. She filed a counter statement. She does not deny the mental infirmity of the appellant. She, however, contended that she did not have any income. She remarried in 2013 and lives along with her present husband. The father of the appellant also remarried. She further contended that only to cause inconvenience to her family life, the father of the appellant filed the original petition

and it lacks bona fides.

3. PW1 the father of the appellant and RW1 were

examined. Exts.A1 to A6 were received in evidence as well. After hearing both sides, the Family Court took the view that since the marriage of the parents of the appellant was separated as early as on 11.06.2003 and the claim for maintenance has been raised only in the year 2016, it is highly belated. Finding further that there is no justification for such a long delay, the claim was declined.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

5. The learned counsel appearing for the appellant

would submit that father of the appellant does not have enough income to meet the expenses of the appellant and the respondent, being the mother, has equal responsibility, but she has not been making any payment towards maintenance. It is true that till 2016 no claim for maintenance was made, but that does not preclude the appellant from claiming maintenance, which is her legal right.

6. The contention of the learned counsel appearing for

the respondent is that for more than one reason the appellant is disentitled from claiming maintenance. The father of the appellant agreed to maintain the appellant and therefore he is estopped from claiming maintenance. It is not proved that the respondent has any income. She is living along with her present husband and she does not have any income. In such

circumstances, the appellant cannot have a claim for maintenance against the respondent.

7. The fact that the appellant is the daughter of the respondent is not a disputed fact. Section 20 of Hindu

Adoption and Maintenance Act, 1956 deals with the liability of a person, who is a Hindu, to maintain his/her children and aged parents. Sub-section (3) of Section

20 reads,- 20. Maintenance of children and aged parents.- xx xx

(3) The obligation of a person to maintain his or her

aged or infirm parent or a daughter who is unmarried extends insofar as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

8. The provision is clear that the mother also has the

obligation to maintain her unmarried daughter as long as she is unable to maintain herself, out of her own earnings or other property. Whether or not the father of such unmarried daughter has income is not a criteria for deciding the obligation of the mother under Section 20(3) of the Hindu Adoption and Maintenance Act.

9. The claim is by a daughter. She is a mentally ill

person, which is a fact not in dispute. The respondent has no case that the appellant has any income of her own. Also, it is undisputed that she remains unmarried. There is nothing on

record to show that the father of the appellant agreed to the respondent that he will lookafter the affairs of the appellant. Even if there was such an agreement, that does not stand in the way of the daughter claiming her legal right under Section 20(3) of the Hindu Adoption and Maintenance Act. In such circumstances, the appellant is legally entitled to claim maintenance from the respondent.

10. The appellant produced Ext.A5 series and Ext.A6

series to prove the expenses in connection with her treatment. She being a mentally incapacitated person and to undergo periodical medical treatment, it is obvious that a reasonable amount is required to meet such expenses. The oral testimony of PW1, the father, in that regard cannot be disbelieved. Regarding the income of the respondent, there is no much evidence. But the fact that she does tailoring work is proved. Therefore, she would be getting a reasonable income.

11. Taking all such aspects into account, we are of the view that the respondent has an obligation to share the amount required for the maintenance of the appellant along

with her father. Accordingly, we find that the respondent is liable to pay at the rate of Rs.2,000/- per month towards maintenance of the appellant. The judgment of the Family Court, Palakkad dated 31.10.2019 is therefore reversed and O.P.No.635 of 2016 is decreed directing the respondent to pay maintenance at the rate of Rs.2,000/- (Rupees two thousand only) per month to the appellant with effect from the date of filing of this appeal. We avoid a direction to pay maintenance from the date of filing of the original petition, considering that the claim itself is highly belated.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr

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