

S.Padmaja Devi vs D.Mohan Thampi

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Court : Kerala

Decided On : Mar-01-2023

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

Appeal No. : CO/52/2020

Appellant : S.Padmaja Devi

Respondent : D.Mohan Thampi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY, THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, 1944 MAT.APPEAL NO.193 OF 2014 AGAINST THE JUDGMENT IN O.P No.1099 OF 2006 DATED 05.10.2013 OF THE FAMILY COURT,THIRUVANANTHAPURAM APPELLANT/RESPONDENT: D.MOHAN THAMPI S/O.DAMODARAN PILLAI, SANTHOSH BHAVAN, KOOVALASSERY P O, NEYYATTINKARA, THIRUVANANTHAPURAM BY ADVS. SRI.M.BALAGOVINDAN SRI.T.K.ANANDA PADMANABHAN SRI.S.SHIBU KUMAR RESPONDENTS/PETITIONERS:

1 S.PADMAJA DEVI W/O.MOHAN THAMPI, PADMAVILOSAM,
KARUMKULAM, PULLUVILA, THIRUVANANTHAPURAM - 695146 2
ASWATHY MOHAN D/O.D.MOHAN THAMPI, PADMAVILOSAM,
KARUMKULAM, PULLUVILA, THIRUVANANTHAPURAM - 695146 3
SOORIA MOHAN D/O.D.MOHAN THAMPI, PADMAVILOSAM,
KARUMKULAM, PULLUVILA, THIRUVANANTHAPURAM - 695146 BY
ADV. V.PREMCHAND THIS CROSS OBJECTION/CROSS APPEAL
HAVING COME UP FOR ADMISSION ON 01.03.2023, ALONG WITH
CO.52/2020, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDHAN &
THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR WEDNESDAY,
THE 1ST DAY OF MARCH 2023 / 10TH PHALGUNA, CO NO.52 OF
2020 AGAINST THE JUDGMENT DATED 05.10.2013 IN O.P.NO.1099
OF 2006 ON THE FILES OF THE FAMILY COURT,
THIRUVANANTHAPURAM NAME AND ADDRESS OF THE CROSS
OBJECTORS/RESPONDENT NO:1 TO 3:

1 S.PADMAJA DEVI AGED 54 YEARS D/O.SANTHAKUMARI AMMA,
PADMAVILASAM, KARUMKULAM, PULLUVILA,
THIRUVANANTHAPURAM - 695 526 2 ASWATHI MOHAN, AGED 35
YEARS D/O.D.MOHAN THAMPI, PADMAVILASAM, KARUMKULAM,
PULLUVILA, THIRUVANANTHAPURAM - 695 526 REPRESENTED BY
HER POWER OF ATTORNEY HOLDER PADMAJA DEVI, D/O.
SANTHAKUMARI AMMA, RESIDING AT
PADMAVILASAMKARUMKULAM, PULLUVILA,
THIRUVANANTHAPURAM - 695 526 3 SURYA MOHAN, AGED 23
YEARS D/O. D. MOHAN THAMPI, PADMAVILASAMKARUMKULAM,
PULLUVILA, THIRUVANANTHAPURAM 695 526 BY ADVS. V.G.ARUN
(K/795/2004) V.PREMCHAND SMT.V.JAYA RAGI

SRI.R.HARIKRISHNAN (KAMBISSERIL) SRI.NEERAJ NARAYAN
NAME AND ADDRESS OF RESPONDENT/APPELLANT: D.MOHAN
THAMPI D/O. DAMODARAN PILLAI, SANTHOSH BHAVAN,
KOOVALASSERY P.O, NEYYATTINKARA, THIRUVANANTHAPURAM -
695 121 BY ADV. M.BALAGOVINDAN THIS CROSS
OBJECTION/CROSS APPEAL HAVING COME UP FOR ADMISSION
ON 01.03.2023, ALONG WITH Mat.Appeal.193/2014, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

P.G.Ajithkumar, J.

The appellant is the respondent in O.P. No.1099 of 2006

before the Family Court, Thiruvananthapuram. That original petition was filed by the respondents herein claiming marriage expenses. As per the judgment dated 05.10.2013, the Family Court decreed that original petition. Aggrieved thereof, the appellant has filed this appeal under Section 19(1) of the Family Courts Act, 1984.

2. As per the order in I.A.No.676 of 2014, further

proceeding pursuant to the judgment in O.P.No.1099 of 2006 was stayed on the condition that the appellant should deposit an amount of Rs.2,50,000/-. In terms of that order the appellant has deposited the amount before the Family Court. On receipt of the notice, the respondents entered appearance and filed a cross objection which was numbered as cross objection No.52 of 2020.

3. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondents.

4. Marriage between the appellant and the 1st

respondent was solemnised on 24.04.1983. Their marriage was separated by a decree of divorce. Respondent Nos 2 and 3 are their children. 2nd respondent was aged 22 years and the 3rd respondent was 9 years at the time of filing the original

petition. Respondents have claimed Rs.4,00,000/- each towards the marriage expenses of respondent Nos.2 and 3. The 1st respondent mother contended that she did not have enough funds to meet the marriage expenses.

5. The appellant resisted the original petition by filing

a written statement. He contended that the 1st respondent alienated 10 cents of land without his consent and the value of the said land is kept in her bank account. Therefore the 1st respondent has enough funds to meet the expenses of marriage of respondent Nos.2 and 3. The appellant also contended that he was only a Junior Commissioned Officer in the Army and the income he has been deriving is too meager to pay any amount to the respondents.

6. Before the Family Court, both the appellant and the 1st respondent tendered oral evidence. Ext.A1 to A3 and B1 to

B11 were marked. The Family Court after considering the said evidence, held that the appellant has the obligation to meet the expenses of marriage of his daughters and accordingly directed him to pay Rs.2,50,000/- towards the marriage expenses of 2nd respondent and Rs.3,50,000/- towards the marriage expenses of the 3rd respondent. Interest at the rate of 12% per annum in the event of non payment within 60 days of the date of decree was also ordered.

7. The learned counsel appearing for the appellant

would submit that the Family Court totally went wrong in ordering to pay such a huge amount to respondent Nos. 2 and 3 ignoring the fact that the appellant has the obligation to look after his present wife and two daughters. It is also contended that the Family Court failed to reckon the fact that the appellant has been getting only a meager monthly income. The learned counsel for the appellant raised a legal contention that under Section 20 of the Hindu Adoptions and Maintenance Act, 1956, a father has obligation to pay maintenance only if the daughter who remains unmarried does not have sufficient income or property.

8. The learned counsel appearing for the respondents

would submit that only a reasonable amount was claimed towards the marriage expenses and considering the status of the parties, the said amount is less. The appellant is an Army officer who has sufficient earnings, apart from the income generated from his landed properties. It is also pointed out that the appellant without any hesitation has been meeting the expenses of his 2nd wife and daughters, but he refuses to make payment of the reasonable amount which has been claimed by the respondents as marriage expenses.

9. The appellant admits his paternity of respondent Nos.2 and 3.

10. Section 20 of the Hindu Adoptions 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 as follows; 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.

11. The provision is clear that a father 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 liability of a father to maintain his unmarried daughter includes payment of marriage expenses, if she is unable to meet such expenses from her own earnings or other property, has been a subject matter for decision of this Court in more than one case.

12. In *Ismayil v. Fathima and another* [2011(4)

KLT 40], the question was whether a Muslim father has an obligation to pay expenses in relation to the marriage of his daughter. This Court considered that question in detail and

held that not only a Muslim father every father irrespective of

the religion has such an obligation. Paragraph No.30 of the

judgment reads as follows:

30. The above discussions lead us to the conclusion

that the right / obligation to maintain the unmarried daughter includes the right / obligation to meet the marriage expenses of the unmarried daughters. This is so for all fathers be they Hindus, Muslims,

Christians or others. We adopt the following process of reasoning to reach that conclusion. They all have the duty under their personal law to maintain their children. Even ignoring the personal law, as declared in Mathew Varghese (supra), such a right / duty can be spelt out from Art.21 of the Constitution. Duty to maintain is not limited to provide for food, raiment and lodging. It includes the duty of the obligee to do all acts for the physical, mental and moral well-being of the child. That duty has to be understood in the context of the Indian society in the modern constitutional republic. The concept has to be understood identically for persons belonging to all religious faiths in the secular polity. Where the interpreter has elbow room, he must invoke the power of interpretation as a functionary of the State consistent with the mandate of Art.44 of the Constitution. The interpreter need not wait for the Parliament to enact a uniform civil code. Till that is done by the Parliament, the interpreter as a functionary of the State must draw inspiration from Art.44 of the Constitution in performing the duty / power of interpretation. So reckoned the duty to maintain the unmarried daughters under the personal law must in the present-day Indian context include the obligation to meet the marriage expenses of the unmarried daughters. For all members of the Indian polity, this has to apply. The Muslim father

also, we hence hold, has the obligation to pay/meet the marriage expenses of his unmarried daughter. We must hasten to observe that the right/duty is only to meet the reasonable expenses, that too only when the daughter is dependent on the father,

13. In *Vikraman Nair v. Aishwarya* [2019(1) KLT

826] also such a question arose. This Court held that the obligation of a Hindu father to maintain an unmarried daughter who is unable to maintain herself is personal and

legal in nature. As per Section 3(b)(ii) of the Act, maintenance includes, in the case of an unmarried daughter, the reasonable expenses of and incidental to her marriage. Even in the case of daughters who are grown up and living with their mother and maintained by the mother who is employed and earning salary, they are entitled to get financial assistance from their father at the time of their marriage. This Court held so by placing reliance on *Smt.Sneh Prabha v. Ravinder Kumar* [AIR 1995 SC 2170]. In the light of the law laid down in the aforesaid decisions, the law is definite that the father has the obligation to meet the expenses in relation to the marriage of his daughter. The fact that the

mother has sufficient income would not absolve him from that liability, although that may have a bearing while computing the quantum.

14. The appellant was an Army officer. The learned

counsel appearing for the appellant would submit that he has retired from service and now he is drawing only monthly pension. He has the 2nd wife and two daughters in that relationship whose affairs are also to be looked after by him. Pointing out those reasons it is contended that the amount ordered by the Family Court is exorbitant.

15. PW1, the 1st respondent during examination

deposed that Rs.5,00,000/- was borrowed from PW2 in order

to meet the marriage expenses of the 2 nd respondent who was already married. The version of PW2 that he advanced money to the 1st respondent is reliable. Therefore the amount required to meet the expenses of marriage of the 2nd respondent was more than Rs.2,50,000/- as quantified by the Family Court. No much discussion is required in order to hold that expenses quantified and awarded by the Family Court towards marriage expenses of the 2nd and 3rd respondents is reasonable.

16. The respondents wanted to enhance the amount

fixed by the Family Court for which they filed cross-objection. The evidence available on record in relation to the probable expenses of the marriage is the oral testimony of PW1 alone. After appreciating that evidence in detail, the Family Court has quantified the amount required to meet the expenses of the marriage. We do not find any reason to hold that the said view is incorrect. In such circumstances, we are of the view that both the appeal as well as the cross-objection are without any merit.

17. Rs.2,50,000/- deposited by the appellant in terms

of the orders of this Court was withdrawn by the respondents. Therefore the first part of the decree that the appellant should pay Rs.2,50,000/- towards the marriage expenses of the 2 nd respondent is satisfied. What remains is the payment of the marriage expenses of the 3rd respondent. The Family Court ordered that in the event of delay in making payment, the amount shall bear interest at the rate of 12% per annum. We are of the view that such a rate of interest is excessive.

Therefore we modify the decree of the Family Court. The appellant is directed to pay Rs.3,50,000/- towards the marriage expenses of the 3rd respondent within two months from today. If the amount is not paid within that period, the respondent shall be entitled to get interest on that amount at the rate of 8% per annum from the date of decree of the Family Court.

Appeal and cross objection are dismissed subject to the above. Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE PV

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