

**Davis C.a vs Mareena Davis**

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**SooperKanoon Citation :** [sooperkanoon.com/1411331](http://sooperkanoon.com/1411331)

**Court :** Kerala

**Decided On :** Feb-16-2023

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

**Appeal No. :** OP (FC)/717/2022

**Appellant :** Davis C.a

**Respondent :** Mareena Davis

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN & THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR THURSDAY, THE 16TH DAY OF FEBRUARY 2023 / 27TH MAGHA, 1944 O.P.(FC) NO. 717 OF 2022 AGAINST THE ORDER DATED 26.08.2022 IN I.A.NO.1 OF 2022 IN O.P.NO.138 OF 2017 ON THE FILES OF THE FAMILY COURT, IRINJALAKUDA PETITIONER: DAVIS C.A AGED 66 YEARS S/O C.P.ANTONY, CHENGINIYADAN HOUSE,,WEST VELOOKKARA VILLAGE, KOMBARA,MUKUNDAPURAM TALUK, PIN-680121. BY ADVS. ASOK KUMAR K.P. RASMI NAIR T. RESPONDENTS:

1 MAREENA DAVIS AGED 62 YEARS, W/O DAVIS C.A., CHENGINIYADAN HOUSE, SREE KRISHNA TEMPLE, WEST VELOOKKARA VILLAGE, KOMBARA, POST, MUKUNDAPURAM TALUK, THRISSUR DISTRICT, PIN-680121. 2 ALVINA DAVIS AGED 29 YEARS, D/O DAVIS C.A. CHENGINIYADAN, HOUSE, WEST VELOOKKARA VILLAGE, MUKUNDAPURAM TALUK, KOMBARA, PIN 680121. 3 ALBERT DAVIS, AGED 22 YEARS, S/O DAVIS C.A., CHENGINIYADAN, HOUSE, WEST VELOOKKARA VILLAGE, KOMBARA, PIN- 680121. BY ADV RAJESH CHAKYAT C THIS OP (FAMILY COURT) HAVING COME UP FOR FINAL HEARING ON 06.02.2023, THE COURT ON 16.02.2023 DELIVERED THE FOLLOWING:

## **JUDGMENT**

**P.G. Ajithkumar, J.**

The petitioner has filed this Original Petition under Article 227 of the Constitution of India seeking to set aside Ext.P4

### **order dated 26.08.2022 of the Family Court, Irinjalakuda in**

I.A.No.1 of 2022 in O.P.No.138 of 2017. As per the said order, the Family Court directed the District Treasury Officer, District Treasury (Pension), Kannur to attach Rs.3 lakhs in lump from the pension account of the petitioner or if that is not practicable, to attach at the rate of Rs.30,000/- per month from his pension.

2. On 04.01.2023, notice was directed to be served on the respondents. An interim order staying operation of Ext.P4 order was granted for a period of one month. The interim order was extended from time to time. The respondents entered appearance through the counsel.

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

4. The 1st respondent is the wife and respondent No.2

and 3 are the children. The respondents filed O.P.No.138 of 2017 claiming maintenance and expenses for the marriage of the 2nd respondent. Respondents also filed I.A.No.3439 of 2017 for an interlocutory order directing payment of marriage expenses and the Family Court ordered to pay Rs.3 lakhs towards the marriage expenses of the 2 nd respondent. The petitioner filed O.P.(FC) No.302 of 2018 before this Court challenging the said order, without success. The petitioner did not make payment as per the said order and therefore the respondents filed IA No.1 of 2022 for the enforcement of that

**order.**

5. The petitioner is a retired Deputy Collector from

the Kerala Government Service. The respondents contended that he had a handsome amount in fixed deposit and has been drawing more than Rs.50,000/- as monthly pension. The respondent denied the said contention. He contended that he has been suffering from various ailments and his only income is the small amount drawing as pension. He thus claims that

he was unable to pay the amount. He also raised a contention that the pension he has been drawing is not attachable.

6. The Family Court, Irinjalakuda placing reliance on the principle laid down in Sivadasan v. Santha [1999 (2) KLT 808], Ismail v. Fathima [2011 (3) KHC 825] and

**Abdul Sathar v. Pathimuthu [2020 (1) KHC 766] held**

that the pensionary benefits could be attached.

7. Now, the submission of the learned counsel

appearing for the petitioner is that attachment of Rs.30,000/- per month from his monthly pension leaves him in pecuniary and the petitioner will not be able to pull

on his life. The learned counsel would further submit that the petitioner suffers from various ailments and attachment of such an exorbitant amount from his pension would practically put to him in starvation. We noticed that none of the parties produced the documents showing the monthly pension of the petitioner. The amount to be realised is Rs.3 lakhs. It is not stated by the respondents, when is the marriage of the 2 nd respondent. Considering the aforementioned facts, we are of

the view that the amount to be attached from the monthly pension can be reduced to Rs.20,000/-. Even so, the respondents can realise the amount of Rs.3 lakhs in 15 months. Accordingly, we allow this Original Petition and the

**order of the Family Court dated 26.08.2022 in I.A.No.1 of**

2022 in O.P.No.138 of 2017 is modified to the extent that Rs.20,000/- will be attached every month from the pension of the petitioner, Davis C.A., Chenginiyadan House, West Veloorkkara Village, Kombara, Mukundapuram Taluk, (PPO No.111236130 of District Treasury, Irinjalakuda) for 15 months.

Sd/- ANIL K. NARENDRAN, JUDGE Sd/- P.G. AJITHKUMAR, JUDGE dkr  
APPENDIX OF OP (FC) 717/2022 PETITIONER EXHIBITS Exhibit P-1 A TRUE COPY OF THE OP NO. 138/2017 BEFORE THE FAMILY COURT, IRINJALAKUDA DATED 14.02.2017 Exhibit P-2 TRUE COPY OF THE JUDGMENT IN OP(FC) NO. 302/2018 DATED 08.02.2021 Exhibit P-3 A TRUE COPY OF THE IA NO. 1/2022 IN OP NO. 138/2017 BEFORE THE FAMILY COURT, IRINJALAKUDA Exhibit P-4 A TRUE COPY OF THE ORDER IN IA NO. 26.08.2022 Exhibit P-5 A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE PETITIONER IN IA NO. FAMILY COURT, IRINJALAKUDA Exhibit P-6 A TRUE COPY OF THE PENSION CERTIFICATE ISSUED BY THE DISTRICT TREASURY OFFICER, IRINJALAKUDA DATED 25.10.2022 Exhibit P-7 A TRUE COPY OF THE CERTIFICATE HAS

BEEN ISSUED BY THE BANK TO THE EFFECT THAT THE PETITIONER HAD NO FIXED DEPOSIT IN THE BANK AS PER LETTER DATED 26.10.2022 Exhibit P-8 TRUE COPY OF THE DOCTOR'S CERTIFICATE DATED 17.11.2022

