

Jayasree vs Suresh

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Court : Kerala

Decided On : Aug-05-2021

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mr.Justice K. Babu

Appeal No. : Mat.Appeal/629/2013

Appellant : Jayasree

Respondent : Suresh

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR.JUSTICE K. BABU
THURSDAY, THE 5TH DAY OF AUGUST 2021 / 14TH SRAVANA, 1943
MAT.APPEAL NO. 623 OF 2013 AGAINST THE ORDER/JUDGMENT IN
O.P.NO.1474/2009 OF FAMILY COURT, THRISSUR

APPELLANT/S: SUJA, AGED 22 YEARS, D/O.JAYASREE &
RESPONDENT, "THEJAS", VAKAYIL SREENILAYAM, GURUVAYUR
VILLAGE, CHAVAKKAD TALUK, REPRESENTED BY POWER OF
ATTORNEY HOLDER AND MOTHER JAYASREE. BY ADV

SRI.K.B.GANGESH RESPONDENT/S: SURESH, AGED 54 YEARS, S/O.BALAKRISHNAN NAIR, EDASSERY HOUSE, SARADA MANDIRAM, KUMARANELLUR P.O., PALAKKAD DISTRICT, PIN-679552. BY ADVS. SMT.R.RAJITHA SRI.P.SANTHOSH PODUVAL THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 05.08.2021, ALONG WITH MAT.APPEAL NO.629/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MR.JUSTICE K. BABU THURSDAY, THE 5TH DAY OF AUGUST 2021 / 14TH SRAVANA, 1943 MAT.APPEAL NO. 629 OF 2013 AGAINST THE ORDER/JUDGMENT IN O.P.NO.207/2009 OF FAMILY COURT, THRISSUR

APPELLANT/S: JAYASREE, AGED 51 YEARS, D/O.RAMAKRISHNAN NAIR, VAKAYIL SREENILAYAM, "THEJAS", PUTHENPALLI, THRISSUR DISTRICT. BY ADV SRI.K.B.GANGESH RESPONDENT/S: SURESH, AGED 54 YEARS, S/O.BALAKRISHNAN NAIR, EDASSERY HOUSE, SARADHA MANDIRAM, KUMARANELLUR P.O., PALAKKAD DISTRICT. BY ADVS. SHRI.SANTHOSH P.PODUVAL SMT.R.RAJITHA SRI.R.N.SANDEEP SMT.CHITHRA.S.BABU THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON 05.08.2021, ALONG WITH Mat.Appeal No.623/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: A.MUHAMED MUSTAQUE & K.BABU, JJ. ===== Mat. Appeal Nos.623 & 629 of 2013 ~~~~~ Dated this the 5th day of August, 2021

JUDGMENT

A.Muhamed Mustaque, J.

These appeals arise from a common judgment on the file of the Family Court, Thrissur. Mat. Appeal No.623 of 2013 was filed by the daughter of the respondent aggrieved by the dismissal of her petition to the extent of claiming Rs.22.5 lakhs expended towards admission for MBBS course undergone at Pariyaram Medical College in NRI quota.

2. Mat. Appeal No.629 of 2013 was filed by the divorced wife

of the respondent therein challenging the dismissal of petition for declaration of immovable property in joint name of the appellant and the respondent, as her exclusive property. Mat.Appeal Nos.623 & 629/2013 4

3. These cases were tried along with the petition for divorce filed by the appellant in Mat Appeal No.629 of 2013. The Family Court had granted a decree of divorce. That has become final.

4. Brief facts leading to Mat appeal No.623 of 2013 are as follows:

The appellant therein is the daughter born to Smt.Jayasree and Shri Suresh, parties to Mat. Appeal No.629 of 2013. Marriage between them was solemnized on 3.11.1987 in accordance with the Hindu custom. The appellant was born on 23.05.1990. Smt.Jayasree was a Senior Lecturer in the Dept. of Zoology in Sree Krishna College, Guruvayoor. Shri Suresh was a gulf returnee. The appellant completed MBBS course from the Pariyaram Medical College. She filed the present petition while she was in the second year of MBBS course. According to the appellant, she paid Rs.45 lakhs towards fees and her mother had raised the above amount after obtaining loan and borrowing money from others. The appellant claimed that her father, the respondent in the appeal, is

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liable to pay at least half of the amount paid to obtain admission in MBBS Course. Apart from that, she also claimed maintenance at the rate of Rs.5,000/- per month towards past maintenance and future maintenance. The Family Court awarded past maintenance at the rate of Rs.3,000/- for six months and future maintenance at the rate of Rs.4,000/- per month. That part of the decree has become final as

there is no challenge against the same.

5. The Family Court declined the claim for Rs.22.5 lakhs finding that the admission obtained in NRI quota was without the knowledge and consent of the respondent-father and he cannot be shouldered with such liability.

6. There cannot be any difficulty to hold that under the

Hindu Adoptions and Maintenance Act 1956, a Hindu is bound to maintain an unmarried daughter, if she is unable to maintain herself. The Apex Court in *Abhilasha v. Parkash* (2020 (6) KLT 341) in categorical terms had taken the view that under Section 20 of the above Act, an unmarried daughter, who is unable to
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maintain herself is entitled to claim maintenance from her father. Similarly, a Division Bench of this Court in *Viswambharan v. Dhanya* (2005 (1) KLT 708) also held that a Hindu unmarried daughter on attaining majority is entitled to continue to claim maintenance from her father until marriage, if she is unable to maintain herself. Under Section 23 of the said Act, the Court shall be at the discretion to determine the reasonable wants of the claimant. No doubt, in normal course, the father is bound to make provisions for education of unmarried daughter even after attaining majority. However, the father cannot be saddled with the liability based on the whims and choices of the option exercised by

the daughter. The admission into NRI quota is not a normal procedure for admission. Admission in NRI quota is for the dependants of the Non Resident Indians, on payment of hefty fee. The normal fees is much below than that of NRI quota fees. No evidence was adduced to prove the normal fees payable. Father is bound to pay the fees that would be normally paid for such course.

Mat.Appeal Nos.623 & 629/2013 7 A Division Bench of this Court in *Ambika v. Aravindakshan* [2018

(1) KLT 125] opined that the father cannot be ordered to shoulder

the obligation of the expenses lavishly spent towards marriage of the daughter. The reasonable wants as referred in Section 23 must be of such expenses or maintenance incurred or to be incurred in normal course of life. After taking note of the overall circumstances, we are of the view that a sum of Rs.5,00,000/- (Rupees five lakhs only) can be directed to be paid towards the fees expended by the appellant. This is taking note of the cost incurred towards tuition fees, hostel fees and other expenses of the appellant.

7. With regard to Mat. Appeal No.629 of 2013, the declaration

sought is to claim an exclusive title over the petition schedule property therein. Admittedly, the title deed is in the joint name of the appellant and the respondent in the appeal. The Family Court did not grant a declaratory relief as sought. However, it granted a Mat.Appeal Nos.623 & 629/2013 8 decree for partition and ordered division of property into two equal shares.

8. According to the appellant, she purchased the property and

the name of the respondent was included in the document as a trustee of the appellant. It is the case of the appellant that the respondent did not contribute towards sale consideration for purchase of the property. On the other hand, the respondent contended that the property was purchased in their joint name utilizing his money. It is submitted by him that consideration was obtained by sale of a property owned by him. According to him, the appellant had no right over the property.

9. The total extent of the property is 15.76 cents. Ext.A5

series are the basic tax receipts for the year 2007, 2008 and 2011. The appellant attempted to prove that she purchased the property with the income she received while working as a Teacher in Gulf countries. She also stated that she sold some of her jewellery. Mat.Appeal Nos.623 & 629/2013 9

10. The Family Court noted that the appellant failed to prove

receipt of substantial income to purchase such property. The Family Court also noted that merely for the reason that basic tax receipts stand in the name of one of the co-owners, that cannot lead to the presumption that the said co-owner is the exclusive owner. The Family Court further found that the respondent had purchased several properties in the joint name of the appellant and the respondent and as well as in the name of the appellant. The Court also found that both the parties might have contributed towards sale consideration.

11. When the property stands in the joint name of the spouses,

there must be sufficient evidence to hold that the other is the binami or mere name lender. There is absolutely no evidence to substantiate the claim of the appellant that she alone contributed towards consideration for purchase of the property. In such circumstances, the Family Court was justified in declining the declaratory relief. The relief of partition granted in such Mat.Appeal Nos.623 & 629/2013 in the circumstances is proper and correct. We dismiss Mat. Appeal No.629 of 2013. The parties are directed to suffer their respective costs.

12. We direct the respondent in Mat.Appeal No.623 of

2013 to pay Rs.5,00,000/- (Rupees five lakhs only) as a consolidated amount towards educational expenses incurred by the appellant within two months, failing which the amount will carry interest at the rate of 9% from the date of default till realisation. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- K. BABU, JUDGE Igk

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