

James Kutty, vs Appellate Tribunal for Protection and Welfare of Parents and Senior Citizen,

James Kutty, vs Appellate Tribunal for Protection and Welfare of Parents and Senior Citizen,

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Court : Kerala

Decided On : Jan-15-2021

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : WP(C)/34098/2019

Appellant : James Kutty,

Respondent : Appellate Tribunal for Protection and Welfare of Parents and Senior Citizen,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V FRIDAY, THE 15TH DAY OF JANUARY 2021 / 25TH POUSHA, 1942 WP(C).No.34098 OF 2019(J) PETITIONER/APPELLANT/6TH OPPOSITE PARTY: JAMES KUTTY, AGED 56 YEARS S/O.JOSEPH, MUKALEL HOUSE, AVA THEKKUMKUTTY, ALLI P.O., MUKKAM, KOZHIKODE- 673602. BY ADV. SRI.T.D.SUSMITH KUMAR RESPONDENTS/APPELLANT/RESPONDENTS/APPLICANT/OPPOSITE

PARTIES:

1 APPELLATE TRIBUNAL FOR PROTECTION AND WELFARE OF PARENTS AND SENIOR CITIZEN, CIVIL STATION, ERANHIPPALAM P.O., KOZHIKODE- 673020, REPRESENTED BY ITS REGISTRAR. 2 ELYKUTTY JOSEPH, AGED 91 YEARS W/O.JOSEPH, C/O.SISILYCLATTIS, FLAT NO.28 A, SOLITAIRE B, COSMOS JEWELS, KAVESAR, THANE WEST, J.B ROAD, MUMBAI- 400615. 3 VIJAYAKUMAR, AGED 72 YEARS S/O.JOSEPH, 2/94 A, CHAKKITTADA, ERANHIPPALAM P.O., KOZHIKODE- 673006. 4 PHILOMINA ISSAC, AGED 65 YEARS W/O.LATE I.G.ISSAC, NO.4, MARBLE ARC, JOURNALIST COLONY, KALOOR, ERNAKULAM- 682017. 5 LEELAMMA G., AGED 63 YEARS D/O.JOSEPH, KALLUNGAL HOUSE, ENGAPUZHA P.O., KOZHIKODE- 673586. 6 SISILYCLATTIS, AGED 68 YEARS D/O.JOSEPH, FLAT NO.28 A, SOLITAIRE B, COSMOS JEWELS, KAVESAR, THANE WEST, J.B ROAD, MUMBAI- 400615.

WP(C).No.34098 OF 2019 2 7 MARGRAT ROBERTS, AGED 69 YEARS D/O.JOSEPH, J.M.M ROAD, MALAD WEST, MALVANI CHURCH, MUMBAI- 40065. R2 BY ADV. SRI.SUNNY XAVIER R2 BY ADV. SMT.C.P.PRETTY R3 BY ADV. SRI.NIRMAL. S R3 BY ADV. SMT.VEENA HARI R4 BY ADV. SMT.M.SHAJNA R4 BY ADV. SRI.K.M.FIROZ R5-6 BY ADV. SRI.AMEER.K.M. R7 BY ADV. SMT.M.P.MARY SMT MABLE C KURIAN, GP THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15.01.2021, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No.34098 OF 2019 3

JUDGMENT

Elykutty Joseph, the 2nd respondent herein is an Octogenarian. The petitioner herein is her son. In addition to the petitioner, Elykutty Joseph has two other sons, who are the 3rd respondent herein and one Late

Sri.I.G.Issac. The 4th respondent is the widow of late Issac. Respondents 5 to 7 are the daughters of Elykutty Joseph.

2. The 2nd respondent approached the Maintenance Tribunal

constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and lodged an application against her children invoking Sections 4, 5 and Section 23 of the Act. She contended that her late husband was the owner of property having an extent of 29 cents. After the death of her husband, she was given false inducements and was made to part with 15 cents by Sri.James Kutty, the petitioner herein. Later, her elder son, Sri.Vijayakumar, persuaded her to assign the balance extent of 9.5 cents to him. Sri.Vijayakumar, had assured the second respondent that he would look after his mother. However, he went back on his word and refused to look after the mother. The second respondent is depending on her daughters for her maintenance during the last lap of her life. She states that her elder son had worked in the military and had worked overseas for a considerable period. The

WP(C).No.34098 OF 2019 4 petitioner herein, on the other hand, had retired from the Kerala Police service while working as an ASI. His wife was a school teacher and they are living in affluent circumstances.

3. The petitioner as well as the other children entered appearance

before the Tribunal and filed counter statements. The petitioner contended that he had handed over substantial amounts to his elder brother for the purpose of looking after the mother. According to him, his father had executed the gift deed in his name taking note of his poor financial condition. It is stated that Sri. Isaac, who is now no more, was very affluent and was a captain in the merchant Navy. After his death, the mother had received huge sums of money towards her share which is sufficient and more for her maintenance. According to the petitioner, he was getting only a meagre amount by way of pension, and every

paise is required for him and his aged wife and for the education of his daughter.

4. The Maintenance Tribunal conducted an enquiry and by order

dated 22.3.2019 ordered that the documents executed prior to the coming

into force of the Act cannot be unsettled. However, the mother was held

entitled to live with any of her children as per her wishes and wants. The petitioner and Sri Vijayakumar, the sons who are living, were ordered to pay a sum of Rs.4000/ towards maintenance per month. The petitioner, Sri. Vijayakumar and two of the daughters, namely Sicily Clattis and Margaret WP(C).No.34098 OF 2019 5 Roberts were ordered to pay the expenses incurred towards the maintenance of a home nurse to take care of the medical expenses of the mother.

5. The order passed by the Maintenance Tribunal was challenged

by the mother as well as the petitioner before the Appellate Tribunal constituted to hear appeals against the order passed by the Maintenance Tribunal. By a common order dated 16.9.2019, the appeals were dismissed confirming the order passed by the Tribunal.

6. This Writ petition is filed by the petitioner challenging the said order. It would be pertinent to note that none of the other children or the mother has chosen to challenge the order.

7. The petitioner contends that no enquiry as contemplated under

Section 8 of the Act was conducted by the Maintenance Tribunal. No proper opportunity was granted by either the Maintenance Tribunal or the Appellate Tribunal to substantiate his contentions. He contends that the Appellate Tribunal has merely endorsed the findings of the Maintenance Tribunal and did not even appreciate the valid contentions advanced by

the petitioner. It is further contended that the petitioner had preferred a petition to reopen the hearing of the appeals but the Appellate Tribunal refused to consider the request. The petitioner further states that the other children of the mother are living in affluent circumstances whereas the petitioner is living in impecunious circumstances. According to him, the daughters are instrumental in the filing

WP(C).No.34098 OF 2019 6 of the frivolous petition with intent to harass the petitioner. According to the petitioner, the treatment expenses are inflated and quarter share is being demanded from the petitioner.

8. I have considered the submissions advanced by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

9. I have also gone through the counter affidavits filed by the respondents.

10. One of the main contentions of the petitioner is that the

Appellate Tribunal failed to consider the contentions raised by him in his appeal. It is also contended that an application to rehear the appeal was preferred but the same was not considered by the Tribunal. Under Section 16 of the Act, only a senior citizen or a parent, who is aggrieved by an order of the Tribunal is entitled to prefer an appeal within 60 days from the date of the

order passed by the Tribunal. No right to prefer appeal is granted to the

children or relatives. In that view of the matter, the contentions advanced on that ground is liable to be rejected.

11. The next contention advanced by the petitioner is that the amount ordered by the Tribunal as confirmed by the Appellate Tribunal is highly onerous.
WP(C).No.34098 OF 2019 7

12. The records reveal that the mother is living with daughters and

she is happy with them. Substantial landed property owned by the family was in fact gifted to the petitioner by the father. The records reveal that the mother requires a dedicated home nurse for taking care of her needs. She would be incurring expenses also for her treatment. The amount payable by the petitioner towards maintenance is Rs 4000/ per mensem. The petitioner was formerly an ASI in the Kerala Police department and he has retired from service. The records reveal that his wife was a teacher. The amount ordered to be paid cannot be said to be excessive in the facts and circumstances. The contention of the petitioner is that he had paid a sum of Rs 1 Lakh to his elder brother and he had agreed to take care of the mother. Both the Tribunal as well as the appellate authority have concluded that the said contention is unsubstantiated. Even otherwise, if any agreement is entered into between the children, the same will not bind the mother and she can always approach the Maintenance Tribunal seeking relief. The Maintenance Tribunal has also directed the petitioner to share one fourth of the amount spent by the children towards hospital and treatment expenses and also for the salary to be paid to the home nurse. The directions issued by the Tribunal as confirmed by the Appellate Tribunal is reasonable and proper in the facts and circumstances.

13. Act 56 of 2007 was enacted for more effective provisions for the maintenance and welfare of parents and senior citizens guaranteed and WP(C).No.34098 OF 2019 8

recognised under the Constitution. Except the petitioner, none of the children have any objection to the directions issued by the Maintenance Tribunal. Having considered the matter in all its perspectives, I find no reason to interfere with the order passed by the Tribunal as confirmed by the Appellate Tribunal.

This Writ petition will stand dismissed. Sd/- RAJA VIJAYARAGHAVAN V JUDGE
DSV WP(C).No.34098 OF 2019 9 APPENDIX PETITIONER'S EXHIBITS:
EXHIBIT P1 THE TRUE COPY OF THE APPLICATION DATED 26.11.2018
SUBMITTED BY THE APPLICANT, THE 3RD RESPONDENT HEREIN. EXHIBIT

P2 THE TRUE COPY OF THE COUNTER STATEMENT DATED 11.01.2019.
EXHIBIT P3 THE TRUE COPY OF THE AGREEMENT DATED

14.06.2005 EXECUTED AMONGST THE PETITIONER, 3RD RESPONDENT
AND THE DECEASED 2ND SON OF THE 2ND RESPONDENT.

EXHIBIT P4 THE ORDER DATED 22.03.2019 IN N1-7186/18 PRONOUNCED BY
THE MAINTENANCE TRIBUNAL. EXHIBIT P5 THE TRUE COPY OF THE
MEMORANDUM OF APPEAL IN APPEAL NO.1/2019 ON THE FILE OF THE
APPELLATE TRIBUNAL. EXHIBIT P6 THE TRUE COPY OF THE
MEMORANDUM OF APPEAL IN APPEAL NO.6/2019 ON THE FILE OF THE
APPELLATE TRIBUNAL. EXHIBIT P7 THE COMMON ORDER DATED
16.09.2019 IN APPEAL NO.01/2019 AND APPEAL NO.06/2019 ON THE FILE OF
THE APPELLATE TRIBUNAL, KOZHIKODE. EXHIBIT P8 THE TRUE COPY OF
THE SUMMARY OF THE EXPENSE

DETAILS SENT TO THE PETITIONER PERTAINING TO EXPENSE OF THE
3RD RESPONDENT HEREIN TOWARDS THE MONTH FEBRUARY 2019.

EXHIBIT P9 THE TRUE COPY OF THE RECEIPT DATED 01.08.2019 SENT TO
THE PETITIONER HEREIN BY THE RESPONDENTS. EXHIBIT P10 THE TRUE
COPY OF THE RECEIPT DATED 02.09.2019 SENT TO THE PETITIONER
HEREIN BY THE RESPONDENTS. WP(C).No.34098 OF 2019 10 EXHIBIT P11
THE PETITION DATED 31.08.2019 TO REOPEN THE HEARING OF THE
APPEAL IN APPEAL NO.1/2019 AND APPEAL NO.1/2019, PREFERRED BY
THE PETITIONER. RESPONDENTS EXHIBITS:NIL //TRUE COPY// P.A TO
JUDGE

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