

Usman Vs. Ramlath

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Court : Kerala

Decided On : Dec-15-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : Usman

Respondent : Ramlath

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY, THE 15TH DAY OF DECEMBER 2014 24TH AGRAHAYANA, 1936 RP(FC).No. 396 of 2014 ()
----- AGAINST THE

ORDER

IN M.C.NO.1036/2009 of FAMILY COURT, MALAPPURAM DATED 11-06-2014
REVISION PETITIONER(S)/RESPONDENT:

----- 1. USMAN K, AGED 62 YEARS
S/O.ABU HAJI(LATE), KOORUKADAN HOUSE, PERINTHALMANNA TALUK,
ARAKKUPARAMBU, MALAPPURAM DISTRICT. BY
ADVS.SRI.K.MOHANAKANNAN SMT.A.R.PRAVITHA

RESPONDENT(S)/PETITIONER(S): ----- 1.
RAMLATH.P., 36 YEARS D/O.UNEN (LATE) PARAPPURAM HOUSE,
CHANDANAPARAMBU PERINTHALMANNA TALUK, PANGU AMSOM, DESOM
MALAPPURAM DISTRICT -679338.

2. ISHRU USMAN(MINOR), AGED6YEARS (REPRESENTED BY GUARDIAN MOTHER IST RESPONDENT) - 679 338 R1 & R2 BY ADV. SRI.VINOD VALLIKAPPAN THIS REV.PETITION(FAMILY COURT) HAVING COME UP FOR ADMISSION ON1512-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: RP(FC).No. 396 of 2014 () ----- APPENDIX PETITIONER'S ANNEXURES ANNEXURE.A1 - TRUE COPY OF THE SALARY CERTIFICATE DATED1812.2010 ISSUED BY JULFAR CLEANING ANNEXURE.A2 - TRUE COPY OF THE LETTER DATED1607.2014 ISSUED BY JULFAR CLEANING RESPONDENT'S ANNEXURES NIL //True Copy// P.A. To Judge Bb K. Ramakrishnan, J.

===== R.P.(F.C.).No.396 of 2014
===== Dated this, the 15th day of December, 2014.

ORDER

Counter petitioner in M.C.No.1036/2009 on the file of the Family Court, Malappuram is the revision petitioner herein.

2. The case was filed by the second respondent through her mother - first respondent claiming maintenance for him. The case of the respondents herein who are the petitioners of lower court was that, the marriage between the first respondent and the revision petitioner was solemnized as per custom and in that, two children were born including the present second respondent. They were not provided maintenance after 17.02.2009 when she was left out of the house. She was looking after her six year old elder female child apart from the present petitioner as well. She filed M.C.No.446/2009 claiming maintenance for herself and the elder child and after enquiry, Rs.4,000/- was ordered to the first respondent and Rs.1,500/- was ordered to the eldest child and though a revision was filed against the same, it was dismissed confirming the order of maintenance passed. It is thereafter, that the present second respondent was born and R.P.(F.C.).No.396 of 2014 :

2. : since no amount was paid as maintenance, she was compelled to file this petition claiming maintenance for the second respondent herein who was only one month old at that time. According to the respondents, the revision petitioner was doing business in Gulf country and getting Rs.1,00,000/- per month and also getting Rs.25,000/- as rental income and Rs.30,000/- from his properties. She was not having any income. So, they prayed for allowing the application granting maintenance at the rate of Rs.4,000/- per month to the second petitioner.

3. The revision petitioner who is the respondent in the court below appeared and filed counter, denying the allegations and even denied the paternity of the second respondent. According to him, the first respondent was having extra marital relationship with somebody, in which, the second respondent was born. He denied the allegations of cruelty and reason for staying away etc., and according to him, he is not liable to pay any maintenance to the second respondent and prayed for dismissal of the application.

4. No oral evidence was adduced on either side and Ext.P1 and P2 were marked on the side of the respondents R.P.(F.C.).No.396 of 2014 :

3. : herein. Since the paternity of the child was denied, the child was subjected to DNA examination from Rajiv Gandhi Centre for Bio Technology and Ext.C1 report was obtained which will go to show that the revision petitioner is the biological father of the second petitioner in the lower court. Thereafter, the court below had allowed the application holding that the second respondent herein is entitled to get maintenance and fixed the quantum of maintenance as Rs.3,000/- per month. This order is being challenged by the revision petitioner by filing the revision before this court.

5. Heard the Counsel for the revision petitioner and the Counsel for the respondents.

6. The Counsel for the revision petitioner submitted that, Annexure A1 and A2 produced by him before this court will go to show that he is not having any employment and he is not getting the income as claimed by the petitioners in the lower court. Further, he had filed objection to Ext.C1 DNA result issued from the

Rajiv Gandhi Centre for Bio Technology and no opportunity has been given to disprove the genuineness of that report. So, he prayed for an opportunity to adduce evidence on that aspect to show that, there is no R.P.(F.C.).No.396 of 2014 :

4. : possibility of the second child being born to him in the wedlock. He had further submitted that, for a six year old child in the earlier maintenance proceedings which was disposed of in the year 2009, the first child was granted only maintenance at Rs.1,500/- per month which was affirmed by this court as reasonable and at the time when the application was filed, the present second petitioner was only one month. So, the quantum of maintenance fixed is excessive and disproportionate to the age of the child.

7. On the other hand, the Counsel for the respondents submitted that, an application for enhancement of maintenance is pending before the court below in respect of the eldest child and that is pending consideration. Further, at that time, he was not able to produce any document. Now, Ext.P1 and P2 will go to show that the revision petitioner is having properties and he is getting income from the properties. Further, no evidence was adduced on the side of the revision petitioner to disprove the DNA result obtained from the Rajiv Gandhi Centre for Bio Technology. The attempt is only to prolong the proceedings and the amount awarded is reasonable as now the child is aged five years. R.P.(F.C.).No.396 of 2014 :

5. :

8. It is an admitted fact that the first respondent herein is the wife of the revision petitioner. It is also an admitted fact that, earlier, there was a child born in that wedlock and since no maintenance was provided to them, the first respondent filed M.C.No.446/09 before the Family Court claiming maintenance for herself and the eldest child and an amount of Rs.4,000/- was awarded as maintenance to the first respondent and Rs.1,500/- to the eldest child and it was fairly conceded by both Counsels that this amount was confirmed by this court in the revision filed by the revision petitioner.

9. It is during the pendency of that proceedings that the second respondent herein was born. The paternity of the child was disputed by the revision petitioner and in order to prove the same, the child was subjected to DNA test in Rajiv Gandhi Centre for Bio Technology and Ext.C1 result was obtained in which, it was stated that the revision petitioner is the biological father of the second respondent herein. It is true that no evidence was adduced. It is also in a way admitted that at the time when the application for maintenance was filed, the marriage between the first respondent and the revision petitioner was subsisting. Once R.P.(F.C.).No.396 of 2014 :

6. : Ext.C1 report is received, the burden is on the revision petitioner to prove that it is not genuine and there is no possibility of a child being born to them in the wedlock. But, no such evidence was adduced. Merely because he was away in Gulf country at that time is not a ground for granting him an opportunity to prove that he is not the father of the second respondent. Further, apart from this, if the marriage was subsisting at that time and a child was born during the subsistence of marriage, then, there is a presumption of paternity under Section 112 of the Evidence Act and unless that is rebutted, the court shall presume that the second respondent was that of the revision petitioner. No evidence has been adduced on the side of the revision petitioner to prove that there is no possibility of any access during that period so as to conceive the second respondent by the first respondent. Though he was very careful enough to produce documents before this court to prove his income, he had not produced any documents before this court to show his incapacity to protect his children also. So, under the circumstances, there is no merit in the submission made by the Counsel for the revision petitioner that he is not the R.P.(F.C.).No.396 of 2014 :

7. : biological father of the second respondent and the prayer for remand to disprove this fact is without any bona fides and he is not entitled to get that relief and this court confirms the finding of the court below that he is the biological father of the second respondent and he is liable to pay maintenance to the child.

10. As regards the quantum of maintenance is concerned, there is some force in the submission made by the Counsel for the revision petitioner. It is an admitted

fact that the same Family Court has awarded only Rs.1,500/- as monthly maintenance to the child of six years in the year 2009 though the application for maintenance was filed in the year 2007. In this case, the application for maintenance for the second child was filed in the year 2009. At that time, the child was only one month old. Further, except producing Ext.P1 and P2 which may show that the revision petitioner is having properties alone is not sufficient to come to the conclusion regarding the actual income he is deriving from the property. The document produced by the revision petitioner before this court also need not be considered for the purpose of considering the question of maintenance payable to a minor R.P.(F.C.).No.396 of 2014 :

8. : child as those are only photostat copies and it cannot be relied on for the purpose of coming to the conclusion that he is not having any employment in Gulf. Further, it cannot be accepted for moment that a person will be working abroad for a pittance and a meager income which he may earn here by doing a reasonable job. So, under the circumstances, the submission by the Counsel for the revision petitioner that he is incapable of paying maintenance is also cannot be accepted.

11. As regards the quantum of maintenance is concerned, this court also feels that the amount awarded is excessive considering age of the petitioner at that time. But, now, the child is aged five years and she may require some more amount for maintenance as well. In order to avoid the multiplicity of proceedings by filing an application for enhancement, this court feels that, instead of affirming the amount of Rs.3,000/- per month, that can be reduced to Rs.1,500/- per month which the petitioner is liable to pay to the second petitioner from the date of petition as ordered by the court below. So, the quantum of maintenance payable to the second respondent is re-fixed as Rs.1,500/- per month from the date of petition. R.P.(F.C.).No.396 of 2014 :

9. : With the above modification of the quantum of maintenance alone, the revision petition is allowed in part and disposed of accordingly. The amount if any deposited by the revision petitioner towards the arrears of maintenance is directed to be adjusted towards the arrears payable at the above mentioned rate and he need pay only the balance amount to clear the liability of arrears of maintenance.

Office is directed to communicate this order to the concerned court immediately.
Sd/- K.Ramakrishnan, Judge. Bb [True copy] P.A to Judge

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