

P.Devadas Vs. Smitha

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Court : Kerala

Decided On : Nov-28-2014

Judge : Honourable Mr. Justice K.Ramakrishnan

Appellant : P.Devadas

Respondent : Smitha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN FRIDAY, THE 28^H DAY OF NOVEMBER 2014 7TH AGRAHAYANA, 1936 RPF.No. 352 of 2014 ()
----- AGAINST THE

ORDER

IN MC5862012 of FAMILY COURT, MALAPPURAM DATED 2006-2014 REVISION PETITIONER/RESPONDENT IN M.C: -----
P.DEVADAS, AGED 56 YEARS, S/O KRISHNAN, ASSISTANT, PASSPORT OFFICER, DOWN HILL, MALAPPURAM, PIN - 676 519. BY ADVS.SRI.AVM.SALAHUDIN SMT.EMIL STANLEY
RESPONDENTS/PETITIONERS IN M.C: ----- 1. SMITHA, AGED 56 YEARS, D/O K.PURUSHOTHAMAN, MID LAND PARK, RESIDENCE APARTMENTS, OPPOSITE SIDE OF WOODBINE GARDEN RESTAURANT, MANJERI ROAD KUNNUMMAI, MALAPPURAM POST - 676 505.

2. CHAMELI, AGED 12 1/2 YEARS (MINOR) MINOR REPRESENTED BY GUARDIAN MOTHER 1ST RESPONDENT R1&2 BY ADV. SRI.VINOD VALLIKAPPAN THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 28.11-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: K. RAMAKRISHNAN, J.

..... R.P.(FC)No.352 of 2014
..... Dated this the 28th day of November, 2014.

ORDER

The counter petitioner in M.C.No.586/2012 on the file of the Family Court, Malappuram is the revision petitioner herein. The first petitioner, who is the guardian of the second petitioner in the lower court, filed the application for enhancement of maintenance under Section 127 of the Code of Criminal Procedure.

2. It is alleged in the petition that the revision petitioner and the 1st respondent were married on 6.2.2011 and the second respondent was born in that wedlock. Due to some difference of opinion, they started living separately, which resulted in the first petitioner in the lower court filing M.C.No.748/2008 before the family court claiming maintenance to the child and the family court by order dated 8.4.2009 awarded maintenance @ Rs.1,500/- per month to the second petitioner. The first petitioner submitted in the petition that on account of escalation in the day today expenditure and also education expenses, the amount is not sufficient to meet the requirements of the child and she requires minimum R.P.(FC)No.352 of 2014 2 Rs.6,000/- for the maintenance of the second petitioner as she is in custody of the child from 2008 onwards. The revision petitioner had got increased salary after the disposal of the case. So he prayed for allowing the application.

3. The revision petitioner, who is the respondent in the lower court, filed a detailed counter denying the allegations in the petition. He had stated that he had admitted the relationship and also order passed by the family court in the earlier proceedings. According to him, the second petitioner in the lower court is studying in Central School located near the house of the first petitioner and education

expenses are met by the employer. Further she is getting more salary than the respondent. He had married again and having two children to be looked after also in that wedlock. So, the amount claimed is exorbitant and he is not liable to pay any enhanced amount.

4. The first petitioner in the lower court was examined as PW1 and revision petitioner was examined as RW1 and Exts.P1 and P2 series were marked on the side of the petitioners in the lower court and Exts.D1 to D3 and Ext.X1 to X3 were also marked on the side of the respondent. After considering the evidence on record, the family court enhanced the maintenance R.P.(FC)No.352 of 2014 3 to Rs.3,500/- per month from the date of petition, that is being challenged by the revision petitioner.

5. Heard both sides.

6. The counsel for the revision petitioner submitted that both the first respondent and the revision petitioner were working in the same institution namely Passport Office and in fact, the first respondent is getting more salary than the revision petitioner. Further education expenses of the child were reimbursed by the employer and as such, there is no further expenses incurred for the first respondent to meet the education expenses of the child. In the earlier marriage, the petitioner had two children whom also he will have to maintain. So he is not able to raise more money to pay additional maintenance to the second respondent herein.

7. On the other hand, the learned counsel for the respondents herein submitted that the amount of Rs.1,500/- was fixed in the year 2008 and considering the cost of living, the amount of Rs.1,500/- is very meager. Merely because mother is employed is not a ground to exonerate the father from the liability to pay maintenance to the children. The court below had considered all the aspects and passed the R.P.(FC)No.352 of 2014 4 order.

8. It is an admitted fact that the revision petitioner and the first respondent were man and wife and their marriage was second marriage. Both of them were having children in their earlier marriage. In the second marriage, the unfortunate second

petitioner was also born. But after the birth of the child, their love lost and they are residing separately. Since the revision petitioner did not provide maintenance to the child, the mother filed M.C.No.748/2008 before the Family Court, Malappuram claiming maintenance to the child and as per order dated 8.4.2009, Rs.1,500/- was fixed as maintenance from the date of petition. That order itself was challenged by the revision petitioner before this Court by filing revision. It is an admitted fact that service conditions of both the first respondent and the revision petitioner has been increased due to lapse of time. Similarly, cost of living also increased.

9. It is settled law that merely because the mother of the child is also earning is not a ground for denying maintenance to exonerate the father from his responsibility to provide maintenance to the child. Further, it is not the education expenses which will be reimbursed by the employer alone is a R.P.(FC)No.352 of 2014 5 matter to be considered for the purpose of fixing the quantum of maintenance to the child as apart from food and cloth, other things like medical expenses and status in which the child will have to be brought up as the children of both employed parents etc are to be considered and evaluated by the courts for fixing the reasonable amount of maintenance required to meet the parents of the child to give him a better status and living in the locality. So considering this aspect and also considering the fact that the mother is also earning, this Court feels that the amount of maintenance fixed @ Rs.3,500/- appears to be little excessive and that is refixed as Rs.3,000/- which the revision petitioner is liable to pay from the date of petition as ordered by the court below. Three months time is granted to the revision petitioner to pay the arrears, if any, in three equal monthly instalments giving credit to any excess amount paid as ordered by the court below, but reduced by this Court. With the above modification of the maintenance amount, this revision petition is disposed of. Sd/- K. RAMAKRISHNAN, JUDGE. cl /true copy/ P.S to Judge R.P.(FC)No.352 of 2014 6