

Radhakrishnan Vs. Mini S.R

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SooperKanoon Citation : sooperkanoon.com/48910

Court : Kerala

Decided On : Mar-04-2015

Judge : Honourable Mr.Justice v.K.Mohanan

Appellant : Radhakrishnan

Respondent : Mini S.R

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.K.MOHANAN & THE HONOURABLE MR. JUSTICE P.D.RAJAN WEDNESDAY, THE 4TH DAY OF MARCH 2015 13TH PHALGUNA, 1936 OP (FC).No. 32 of 2015 (R) ----- AGAINST THE

ORDER

IN I.A.NO.1138/2014 IN OP13302012 of FAMILY COURT,TRIVANDRUM DATED 13.8.2014 PETITIONER(S): ----- RADHAKRISHNAN AGED 50 YEARS S/O.THANKAPPAN, KARUVAMOODU HOUSE, VALIYARA VELLANADU, NEW RESIDING AT 17TH MILE, JERAMPUR (P.O.) CHANGLAGU DISTRICT, ARANACHAL PRADESH BY ADV. SRI.NIDHI BALACHANDRAN RESPONDENT(S): ----- 1. MINI S.R D/O. K. SUMATHI, ANI BHAVAN, MOTTAMOODU NEMOM(P.O), PALLICHAL VILLAGE, NEYYATTINKARA THIRUVANANTHAPURAM 2. AYSWARYA M.R.(MINOR) D/O.MINI, ANI BHAVAN, MOTTAMOODU NEMOM(P.O), PALLICHAL VILLAGE, NEYYATTINKARA

THIRUVANANTHAPURAM R1 BY ADV. SRI.RAM MOHAN.G. R1 BY ADV. SRI.G.P.SHINOD R1 BY ADV. SRI.MANU V. R1 BY ADV. SRI.GOVIND PADMANAABHAN R1 BY ADV. SRI.AJIT G.ANJARLEKAR THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON0403-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 32 of 2015 (R)

----- APPENDIX PETITIONER(S)' EXHIBITS -----

EXT P1:TRUE COPY OF THE PETITION IN OP.1330/2012 BEFORE THE FAMILY COURT, THIRUVANANTHAPURAM EXT P2:TRUE COPY OF THE AFFIDAVIT FILED BY THE1T RESPONDENT IN OP.1330/2012 EXT P3:TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN OP.1330/12 EXT P4:TRUE COPY OF THE IA.166/13 FILED BY THE1T RESPONDENT FOR INTERIM MAINTANANCE EXT P5:TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO EXHIBIT P4 PETITION. EXT P6:TRUE COPY OF THE

ORDER

DATED26H82013 ISSUED BY THE FAMILY COURT , THIRUVANANTHAPURAM. EXT P7:TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE COUNSEL FOR THE PETITIONER. EXT P8:TRUE COPY OF THE OBJECTION FILED BY THE1T RESPONDENT EXT P9:TRUE COPY OF THE PETITION TO STRUCK OF THE DEFENSE FILED BY THE PETITIONER EXT P10:TRUE COPY OF THE

ORDER

DATED1308.2014 IN IA.1138/2014 IN OP.1330/12 RESPONDENT(S)' EXHIBITS -----: NIL. TRUE COPY PA TO JUDGE. acd V.K. MOHANAN & P.D. RAJAN, JJ.

----- O.P.(FC) No. 32 of 2015

----- Dated this the 4th day of March, 2015

JUDGMENT

V.K.Mohan,J.

The petitioner herein, is the husband of respondent No.1 and father of respondent No.2. As per the facts alleged in the above original petition, the marriage between

the petitioner and the 1st respondent was solemnized on 27.5.1998 as per the Hindu rites and ceremonies and in that wedlock, the 2nd respondent, a girl child, was born to them. Due to difference of opinion among the couple, the respondents filed O.P.No.1330/2012 for recovery of money, value of gold ornaments and maintenance from the petitioner herein as evidenced by Ext.P1. The petitioner, who is the respondent therein filed objection to Ext.P1. The said Mat. Appeal No.378/2005 2 objection is produced as Ext.P3 in this O.P.(FC). During the pendency of the above main matter, the 1st respondent herein filed a petition claiming interim maintenance from the petitioner as per Ext.P4, i.e. I.A.No.166/2013 to which the petitioner herein filed Ext.P5 objection. The Court below, after considering case of the claimants and the objection filed by the petitioner herein, issued Ext.P6 order granting interim maintenance at the rate of 5,000/- each for the wife and the daughter per month from the date of the petition i.e., 18.8.2012 and also directed to pay the arrears within 60 days from the date of that order and also ordered that monthly maintenance from the date of that order shall be positively paid before 10th of every month. Subsequently, the petitioner preferred Ext.P7, I.A.No.2136/2013, stating that in paragraph 5 of Ext.P5 objection, the amount given to the respondent was shown mistakenly as 15,000/- and Mat. Appeal No.378/2005 3 consequently, sought an order to correct the said mistake crept in the affidavit and the petition. Though Ext.P6 order was issued as early as on 26.8.2013, no payment was made and therefore, the respondents herein filed I.A.No.1138/2014 in O.P.No.1330/2012 with a prayer to stick off the defence of the petitioner, who is the respondent in the main matter pending before the Court below. As no objection was filed, the Court below allowed the said prayer as per Ext.P10. It is at this stage, the petitioner preferred this O.P.(FC) praying inter alia to set aside Ext.P10 order dated 13.10.2014 in I.A.No.1138/2014 in O.P.No./1330/2012 of the Family Court, Thiruvananthapuram.

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

3. The learned counsel for the petitioner, after taking us through Ext.P5 objection, submitted that by a Mat. Appeal No.378/2005 4 typographical mistake, the amount paid to the respondents shown as 15,000/- in paragraph 5 of Ext.P5 and though a

petition was filed to correct the said mistake, the Court below refused to consider the same and passed Ext.P10 order. Whereas the learned counsel appearing for the respondents, after taking us through Ext.P3 objection, it is submitted that in the above referred main objection to the O.P.No.1330/2012, particularly in paragraph 5, the very same petitioner has stated that he paid 15,000/- to the claimants and therefore, the contention of the petitioner that the figure shown as 15,000/- is a clerical mistake cannot be accepted.

4. We have carefully considered the rival submissions made by the both the counsel and we have perused the materials produced in this O.P.(FC).

5. Having regard to the facts and circumstances involved in this case, we are of the view that this Court Mat. Appeal No.378/2005 5 need not go into the contentions advanced by the learned counsel for the petitioner as well as the respondents about the reliefs sought for by the petitioner as per Ext.P7 petition, since the same is pending before the Court below. We are also of the view that while Ext.P7 is pending before the Court below, we cannot approve the approach of the Court below in issuing Ext.P10 order. However as pointed out by the learned counsel for the respondents, though Ext.P6 order was passed as early as on 26.8.2013, so far no single pie was paid by the petitioner towards the claimants, who are none other than his wife and daughter. Therefore, we are inclined to issue a direction to the Family Court to consider Ext.P7 petition and such directions can be issued only on terms and to enable the Court to pass fresh orders, Ext.P10 can be quashed. In the result, this O.P.(FC) is disposed of setting aside Ext.P10 order so as to enable the Court below to pass Mat. Appeal No.378/2005 6 fresh orders on Ext.P7 petition and thereafter, if necessary, to pass orders in I.A.No.1138/2014, on condition that the petitioner deposits half of the arrears as on today as per Ext.P6 order in the Court below within one month from today. On depositing such amount, the respondents herein are free to withdraw the said amount. On complying with the above direction, the Court below is directed to consider Ext.P7 and pass appropriate orders thereon within 45 days from the date of receipt of a copy of this judgment. V.K. MOHANAN, JUDGE. P.D. RAJAN, JUDGE. acd Mat. Appeal No.378/2005 7 Mat. Appeal No.378/2005 8