

Sharafudhin Vs. Sulaikha

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Court : Kerala

Decided On : Sep-01-2015

Judge : Honourable Mr. Justice B.Sudheendra Kumar

Appellant : Sharafudhin

Respondent : Sulaikha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.SUDHEENDRA KUMAR TUESDAY, THE 1ST DAY OF SEPTEMBER 2015 10TH BHADRA, 1937 RPFC.No. 8 of 2006 () AGAINST THE

ORDER

IN----- COURT, MALAPPURAM MC2442005 of FAMILY DATED 22-11-2005 REVISION PETITIONER(S)/REVISION PETITIONER/RESPONDENTS: ----- SHARAFUDHIN, S/O.ABDU, ANDIKKADAVAN HOUSE, MALIYEKKAL, AMBALAKADAVU.P.O VELLAYOOR, NILAMBUR, MALAPPURAM DISTRICT. BY ADV. SRI.BABU S. NAIR RESPONDENT(S)/PETITIONER: ----- 1.THORAPPA D/O.KAMMU, SULAIKHA, HOUSE, CHATHANGOTTUPURAM, NILAMBUR MALAPPURAM DISTRICT.

2. NAHALA-MINOR, REPRESENTED BY THE FIRST RESPONDENT-MOTHER-GUARDIAN.

3. MUHAMMED NISAM-MINOR, REPRESENTED BY THE FIRST RESPONDENT-MOTHER- GUARDIAN. THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 01/09-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: B. SUDHEENDRA KUMAR, J.

..... R.P.(F.C.) No. 8 of 2006
..... Dated this the 1st day of September, 2015

ORDER

The revision petitioner is the respondent in M.C. No. 244 of 2005 on the files of the Family Court, Manjeri, who in this Revision Petition challenges the order passed by the court below directing the revision petitioner to give a monthly maintenance of Rs. 400/- to the first respondent herein, Rs. 350/- to the 2nd respondent and Rs. 300/- to the 3rd respondent herein.

2. The first respondent herein is the wife and respondent Nos. 2 and 3 are the children of the revision petitioner. The marriage between the revision petitioner and the first respondent and the paternity of the children are not disputed. According to the first respondent, the revision petitioner used to treat her with -:

2. :- R.P. (F.C.) No. 8 of 2006 cruelty. When she was pregnant for three months in her second pregnancy, she was driven away from the house by the revision petitioner and thereafter, the revision petitioner did not give maintenance to the respondents.

3. The revision petitioner contended that the revision petitioner was having physical handicap and hence, the first respondent used to ill-treat him. According to the revision petitioner, the first respondent left the house as she was not interested in residing with the revision petitioner owing to his physical handicap.

4. The first respondent was examined as PW1 and the revision petitioner was examined as RW1 before the court below. PW1 had given evidence in support of her contentions and RW1 had given evidence in support of his contentions. The

court below, after evaluating the evidence of PW1 and RW1, found that the evidence of PW1 that she was forced to leave the company of -:

3. :- R.P. (F.C.) No. 8 of 2006 the revision petitioner as she was ill-treated by the revision petitioner, could be more probable. According to the first respondent, the revision petitioner did not have any disability, apart from his short height. It is borne out from the records that the first respondent is having two children in her wed-lock with the revision petitioner. She lived with the revision petitioner for years. In the said circumstances, it is preposterous to conceive that she would leave the company of the revision petitioner on the mere reason that the revision petitioner had some physical handicap. Having gone through the relevant inputs, I am satisfied that the finding of the court below in this regard does not suffer from any infirmity or incorrectness.

5. The first respondent would contend that the revision petitioner was working as a teacher in a Madrassa, earning Rs. 3000/- per month. It was further contended by the first respondent that the revision petitioner was also having income -:

4. :- R.P. (F.C.) No. 8 of 2006 from the landed properties. The court below did not accept the contention of the first respondent that the revision petitioner has income from the landed properties, as no material was produced before the court below to substantiate the same. However, the court below accepted the evidence of PW1 that the revision petitioner was having an income of Rs. 3000/- per month from his job as a teacher in the Madrassa. Eventhough the revision petitioner contended that the first respondent is doing tailoring work, the said contention of the revision petitioner was not accepted by the court below. The court below observed that the revision petitioner did not have a contention that the first respondent had ever conducted any tailoring work till she left the company of the revision petitioner. Therefore, the court below correctly found that it was unlikely that the first respondent could do the tailoring work after learning the same after leaving the company of the revision petitioner. No material was also placed -:

5. :- R.P. (F.C.) No. 8 of 2006 before the court below to indicate that the first respondent had any avocation.

6. The revision petitioner further contented that he is not in a position to do any work due to illness. However, no material had been placed before the court to substantiate the same. From the evidence on record, it can be seen that the revision petitioner could maintain the first respondent and her elder child till the first respondent left the company of the revision petitioner, by doing work. In the said circumstances, particularly in the absence of any material, it cannot be said that the revision petitioner is not in a position to do any work as he has ailments. The revision petitioner, being the husband of the first respondent and the father of the other respondents, he is duty bound to maintain his wife and children. The evidence on record does not reveal that the first respondent is having any avocation or income. Therefore, her contention that she is unable to maintain -:

6. :- R.P. (F.C.) No. 8 of 2006 herself was correctly accepted by the court below.

7. The court below, after evaluating the relevant inputs, correctly found that the revision petitioner was bound to maintain the respondents. The quantum of the amount fixed by the court below is also very reasonable. Having meticulously gone through the relevant inputs, I do not find anything to hold that the order impugned is perverse, incorrect, illegal or improper, warranting interference by this Court. In the result, this Revision Petition (FC) stands dismissed. The revision petition is granted three months' time to make payment of the entire arrears of maintenance as directed by the court below. B. SUDHEENDRA KUMAR, JUDGE. ani/

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