

Kadeeja Vs. Aboobacker

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Court : Kerala

Decided On : Feb-21-1995

Reported in : II(1995)DMC233

Judge : M.M. Pareed Pillay, C.J.

Acts : Mohammedan Law

Appeal No. : C.R.P. No. 2454 of 1994

Appellant : Kadeeja

Respondent : Aboobacker

Advocate for Def. : P. Nandakumar, Adv.

Advocate for Pet/Ap. : T. Krishnanunni, Adv.

Disposition : Petition allowed

Judgement :

M.M. Pareed Pillay, C.J.

1. Revision petitioners who are the minor children of the respondent filed E.P. 204 of 1993 in O.S. 335 of 1991 before the Munsiff Court, Parappanangadi for arrest and detention of their father (respondent) as he failed to pay the maintenance amount decreed in their favour. Revision petitioners 1 to 4 (children of the 5th

revision petitioner and the respondent) filed the execution petition for realisation of arrears of maintenance and future maintenance on the allegation that respondent had agreed to pay Rs. 200/- each to them. Respondent remained ex parte and the suit was decreed. In execution he pleaded no means. The executing Court accepted the said plea and dismissed the execution petition.

2. Main contention of the revision petitioners is that the personal law of the parties does not make any distinction between a person having means or not in the matter of maintenance to the children and the Executing Court obviously overlooked that aspect of the matter.

3. Under Mohammedan law or dinarily no person is duty-bound to maintain any of his relatives. The said rule is subject to the exception with regard to his wife and children. A husband is bound to maintain his wife and children even if he is necessitous. A person is said to be necessitous if he is not possessed of means to maintain himself or to provide maintenance to others as envisaged under the Mohammedan law. Under Islamic law father has to maintain his sons till they attain puberty and daughters till they are married. He cannot take the stand that he is in impecunious circumstances and so unable to maintain them (Reference--Islamic Law VI Edn. by B.R. Verma Page 283--Bail 1,467). Father's obligation to maintain his children cannot be denied on the ground of his pecuniary incapacity or indigence so long as he has ability to earn (Bail I--456 (460), Hedeya 340).

4. Respondent was working in a Gulf country. He is aged 35 years. He has a case that he met with an accident and so unable to work. Except that assertion he did not produce any document before the Court to substantiate the above contention. His version that he is unable to work cannot be accepted in the absence of any cogent evidence. His evidence that he is prepared to maintain his children has completely been overlooked by learned Munsiff. As he has specifically deposed that he is ready to maintain his children the Court below ought not have dismissed the execution petition and ought to have taken necessary steps to enforce the decree.

5. The order of the Munsiff is set aside and the E.P. is restored to file. The Executing Court is directed to take necessary steps for realisation of the amount

due to revision petitioners 1 to 4.

C.R.P. stands allowed with costs.

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