

In Re: Parathy Valappil Moideen

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SooperKanoon Citation : sooperkanoon.com/780925

Court : Chennai

Decided On : Jul-14-1913

Reported in : (1913)25MLJ355

Appellant : In Re: Parathy Valappil Moideen

Judgement :

ORDER

Sadasiva Aiyar, J.

1. This is an application by the father of two children who has been ordered under Section 488 of the Criminal Procedure Code to pay to the mother of the children Rs. 6 a month for their maintenance. The petitioner is a mopla, who has divorced his wife who lives in her own tarwad house with her children, the parties being governed by Marumakathayam law though Mussalmans in religion. The grounds of the petition are : (1) the lower Court erred in law in ordering the petitioner to pay for the maintenance of the children who belong to a well-to-do tarwad; (2) the lower Court erred in law in directing the petitioner to pay for the maintenance of the boy who is ten years of age and to whose custody the petitioner is entitled, and (3) the petitioner having expressed his willingness to take the boy and maintain him, the order of the lower Court with regard to the boy is illegal.

2. As regards the second ground, the petitioner might be entitled to the custody of the boy if the parties were governed by the Mahomedan law, but as they are

governed by the Marumakkathayam law, this contention fails.

3. As regards the 3rd ground the petitioner being willing to take the boy and maintain him has nothing to do with his liability to give the boy maintenance when the boy is living with his natural guardian. Section 488 Clause (4) disentitles to maintenance, only a wife who refuses to live with her husband without sufficient cause and does not disentitle a child who is living with its lawful guardian.

4. As regards the first ground, the fact that the children belong to a well-to-do tarwad has nothing to do with the liability of a father who has sufficient means to maintain his child and neglects to do so. It was argued by Mr. Kunhiraman that under Section 488(1) it is only a child who is unable to maintain itself that is entitled to claim maintenance and that a child whose tarwad has got means to support it cannot be said to be a child unable to maintain itself. I think the inability referred to in the section relates to absence of sufficient maturity of physical and mental development in the child rendering it in consequence unable to earn its living by its own efforts and does not refer to inability through poverty or absence of means. This view is supported by the principle underlying the decision in the matter of the petition of W.B. Todd (1873) 5. N.W.H.C.R. 237 where it was held that a child deaf and dumb and unable to maintain itself is entitled to maintenance although it may have arrived at the age of majority. I therefore reject this petition.