



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE H.T. NARENDRA PRASAD

REV.PET FAMILY COURT NO. 128 OF 2014

BETWEEN:

1. SRI NANDEESHA
S/O LATE BASAVAIHAH,
AGED ABOUT 34 YEARS,
R/AT NO.2858/1, 3RD CROSS,
2ND MAIN, JAYANAGAR,
MYSORE-570 014. .. PETITIONER

(BY SRI. NARENDRA D V GOWDA, ADVOCATE)

AND:

1. SMT SUDHAMANI
W/O LATE BASAVAIHAH,
AGED ABOUT 54 YEARS,
R/AT "LAKSHMAMMA BUILDING"
NO.2368/2,NEW KANTHARAJURS ROAD,
K G KOPPAL,
MYSORE-570 014. .. RESPONDENT

(BY SRI. H V BHANUPRAKASH ., ADVOCATE)

RPFC FILED U/SEC.19(4) OF FAMILY COURT ACT,
AGAINST THE ORDERS DATED 12.06.2014 PASSED IN
C.MISC.404/2010 ON THE FILE OF THE ADDL. JUDGE, FAMILY
COURT, MYSORE, PARTLY ALLOWING THE PETITION FILED
U/SEC.125 OF CR.P.C.

THIS PETITION, COMING ON FOR FINAL HEARING, THIS
DAY, THE COURT MADE THE FOLLOWING:





ORDER

This petition is filed by the respondent/son under Section 19(4) of the Family Court Act, challenging the order dated 12.06.2014, passed by the Judge, Additional Family Court, Mysore in C.Misc.No.404/2010, whereby the petition filed by the petitioner/mother under Section 125 of Cr.P.C., has been allowed.

2. For the sake of convenience, the parties are referred to as per their ranking before the Family Court.

3. The case of the petitioner/mother is that she is the legally wedded wife of one Basavaiah and out of their wedlock they got one son and two daughters. After the death of her husband, her son has deserted her, he is not maintaining her and she is unable to earn her livelihood. Therefore, she filed a petition before the Family Court. On service of summons, the respondent/son appeared through the counsel and filed objections denying the averments made in the petition and contended that she is not residing with the respondent, when their father was



alive, she has deserted him and living separately from the matrimonial house, during the lifetime of the father, he purchased sites and house properties in the name of the petitioner and she has sufficient source of income from the said property. Hence, sought for dismissal of the petition.

4. The Family Court, on the basis of the pleadings of the parties, has framed the following issues:

"(i) Whether the petitioner proves that the respondent without any sufficient cause has refused and neglected to maintain the petitioner?"

(ii) Whether the petitioner is entitle for maintenance? If so, at what rate?"

(iii) What order?"

To prove the case, on behalf of the petitioner, the petitioner examined herself as PW1 and marked documents as Exs. P1 to P4. On behalf of the respondent, the respondent examined himself as RW1 and marked documents as Exs.R1 to R13. On appreciation of the oral



and documentary evidence, the Family Court answered issue Nos. 1 and 2 in the affirmative, allowed the petition and directed the respondent/son to pay Rs.3,000/- per month to the petitioner/mother as maintenance. Being aggrieved by the same, the respondent/son has filed this petition.

5. The learned counsel appearing for the respondent/son has raised the following contentions:

(i) Firstly, during the lifetime of his father, the petitioner has deserted her husband and children and she is living separately and during the lifetime of his father, his father purchased site Nos.21 and 21/A in the name of the petitioner and she has constructed a residential building and let out the same and she is getting rent which is sufficient for her livelihood.

(ii) Secondly, since the respondent/son was unable to produce the documents to show that the petitioner has the income from the house properties, the Family Court, allowed the petition and granted maintenance to the petitioner/mother. Now that, he has filed a memo along



with the documents to show that she has sufficient income for her livelihood, if this Court grants one more opportunity, he can establish the same before the Family Court. Hence, he prays for allowing the petition.

6. Per contra, the learned counsel appearing for the petitioner/mother has contended that she has not got any income from the house property for her livelihood. Hence, he prays for dismissal of the petition.

7. Heard the learned counsel appearing for the parties and perused the impugned order.

8. It is not in dispute that the petitioner is the mother of the respondent, she was married to one Basavaiah. It is also not in dispute that Basavaiah died long back. The Family Court has given a specific finding that the documents produced by the respondent discloses that she is owning a house property bearing Nos. 21 and 21/A and also other properties purchased in her name by her husband Basavaiah. Since no documents have been produced before the Family Court to show that from the



house property she is getting sufficient income for her livelihood, the Family Court allowed the petition. Now the respondent/son has filed a memo along with the documents to show that some residential building has been constructed in the property which is purchased in the name of the petitioner and some of the portion of the house property have been let out for rent. These documents have been produced before this Court for the first time. Therefore, without going into the validity of the said documents, in the interest of justice, the matter requires to be remitted back to the family Court for fresh consideration to give one more opportunity to the respondent/son to produce the necessary documents to prove his case.

9. In view of the above, I pass the following order:

(i) The petition is allowed.

(ii) The order dated 12.06.2014 passed by the Judge, Additional Family Court, Mysore in C.Misc.No.404/2010 is set aside.



(iii) The matter is remitted back to the Family Court to re-consider the matter afresh, after giving opportunity to both the parties to adduce additional evidence and to produce additional documents.

Sd/-
JUDGE

CM
List No.: 1 SI No.: 65