



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR

REV.PET FAMILY COURT NO. 94 OF 2018

BETWEEN:

SMT. S. GEETHANJALI,
WIFE OF MANJUNATH T.M.,
AGED ABOUT 43 YEARS,
OCCUPATION: HOUSE WIFE,
RESIDING AT
CHANNASOMESHWARA NILAYA,
2ND MAIN, 4TH CROSS, VIJAAYANGARA,
TUMAKURU - 572 101.

...PETITIONER

(BY SRI. KANTHARAJU N.K., ADVOCATE)

AND:

SRI. MANJUNATH T.M.,
SON OF G. MALLESHANNA,
AGED ABOUT 51 YEARS,
OCCUPATION: AGRICULTURE,
RESIDING AT : THEETHA VILLAGE,
KORATAGERE TALUK,
TUMAKURU DISTRICT - 572 129.

...RESPONDENT

(BY SRI. NITHISH N., ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

THIS RPFC IS FILED UNDER SECTION 19(4) OF THE
FAMILY COURTS ACT, 1984, AGAINST THE JUDGMENT AND
DATED 17.03.2018 PASSED IN C.MIS.32/2017 ON THE FILE OF





THE PRINCIPAL JUDGE, FAMILY COURT TUMAKURU,
DISMISSING THE PETITION FILED UNDER SECTION 125 OF
CRPC FOR MAINTENANCE.

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

ORDER

The present petition is filed by the wife calling in question the order passed by the Family Court in dismissing the petition filed for maintenance.

2. The relationship between petitioner and respondent as wife and husband is not in dispute. On certain allegations, the petitioner/wife started living separately from her husband and therefore, filed a petition C.Misc.No.32/2017 under Section 125 of the Code of Criminal Procedure seeking maintenance and the Family Court dismissed the petition filed by the petitioner/wife. Hence the petitioner has filed the instant revision petition.

3. The Family Court rejected the petition filed by the petitioner/wife seeking maintenance on the reason that the petitioner/wife had not contested the divorce petition i.e., M.C.No.23/2009, filed by the respondent herein seeking divorce



wherein the respondent/husband had made allegation against the petitioner/wife that she is having illicit relationship with other person.

4. The learned Counsel for the petitioner/wife contends that just because M.C.No.23/2009 filed by the respondent/husband for divorce was not contested by the petitioner/wife is not a ground to deny maintenance. The respondent/husband has merely made an allegation in the said petition filed for divorce that the petitioner/wife is leading adulterous life, but no evidence is produced to prove the same. It is contended that in the said petition that one Nirmala, wife of Paramesh had filed a maintenance petition i.e., C.Misc.104.2012 on the other ground and has not made allegation of adulterous life led by Paramesh with petitioner wife. Therefore the Family Court has absolutely committed error by recording finding that the petitioner/wife is leading an adulterous life. Merely because the petitioner/wife has failed to contest the case in M.C.No.23/2009 is not a ground to deny the maintenance and therefore, submitted that the Family Court was not justified in refusing to grant maintenance. Therefore, prays to allow the petition.



5. On the other hand, learned Counsel for the respondent/husband submitted that from the year 2008, the petitioner herself has deserted the respondent/husband and is living separately by leading adulterous life. The petitioner and respondent have three children, who are staying with the father/respondent herein. He further submitted that the respondent/husband has filed divorce petition i.e., M.C.23/2009 which is not contested by the petitioner/wife and hence, an inference can be drawn against the petitioner/wife that in order to lead adulterous life she has left her husband/respondent voluntarily and therefore, the Family court is justified in dismissing the petition. He, therefore, submitted that considering the evidence lead by both parties and the petitioner/wife keeping silence in not contesting M.C.No.23/2009, prove the allegation of adulterous life lead by the petitioner and as such, she is not entitled for maintenance. Therefore, justifying the order passed by the Family Court, prayed to dismiss the revision petition.

6. The marriage between the petitioner and respondent and they both are husband and wife are not in dispute. The husband/respondent herein had filed a divorce petition in



M.C.No.23/2009 on the ground that petitioner is leading adulterous life with one Parmesh. In the said petition, though the petitioner/wife had engaged the services of an advocate, has not contested the same. Thus an exparte decree of divorce was granted. But merely because the petitioner/wife keeping silence on M.C.No.23/2009 seeking divorce and not contesting the said petition does not prove that the petitioner/wife is leading an adulterous life. What the respondent/husband is alleging against the wife/petitioner herein that she is leading adulterous life is only a mere allegation and even the Family Court in M.C.No.23/2009 has failed to observe that the said allegation is proved. Only on the basis that the contentions urged in M.C.No.23/2009 are not challenged, the Family Court has granted an exparte decree of divorce. Just because the wife/petitioner herein has not challenged the said M.C.No.23/2009 and she is silent on the averments/allegations made in the petition, does not prove the allegation against wife/petitioner herein that she is leading an adulterous life. It has to be proved by producing evidence by the husband/respondent herein whether she is leading an adulterous life or not and the burden is on him to prove the



same. Except making allegations in M.C.No.23/2009, the husband/respondent has not proved the same.

7. Further it has to be noticed that the allegations made by the respondent/husband against the petitioner/wife is that she is leading an adulterous life with one Paramesh and the wife of Paramesh has filed maintenance petition in C.Mis.104/2012 and therefore, the wife of Paramesh has left him (Paramesh) for the reason that the petitioner herein has started to live with Paramesh.

8. On perusal of Ex.P.9 - certified copy of the petition in C.Mis.104/2009. no allegations are made by the wife of Paramesh against her husband that he is having illicit relationship with other woman. The grounds urged for maintenance is that the said Paramesh had deserted her. But there is no allegation in M.C.104/2012 by the wife of Paramesh that her husband (Paramesh) is leading an adulterous life. Therefore, this does not prove that the petitioner/wife is leading an adulterous life.

9. Mere silence on the part of the petitioner in not contesting M.C.No.23/2009 and not challenging the exparte



decree of divorce do not prove that the petitioner/wife is leading an adulterous life. Therefore, the reason assigned by the Family Court is only on the basis of surmises and conjectures while dismissing the petition. Whatever may be the presumption, it cannot par take the proof. The fact may be presumed but that presumption cannot have the characteristic of legal proof. Unless statutory presumption is provided. Therefore, the Family Court is not correct in dismissing the petition filed for maintenance by the petitioner/wife and the same is liable to be set aside.

10. The learned Counsel for the respondent/husband submitted that the petitioner/wife has not filed an affidavit of assets and liabilities to prove in what way she is unable to maintain her life and therefore, the petitioner is not entitled for maintenance amount. As per the dictum of the Hon'ble Supreme Court in the case of *Rajnish -vs- Neha & Another in Special Leave to Appeal(CRL.) No. 9503 OF 2018 judgment dated 4.11.2020* filing of affidavit of assets and liabilities by both parties is for the purpose of enabling the Courts to come to a conclusion regarding assessment of quantum of maintenance. Non filing of affidavit of assets and liabilities by



the petitioner/wife is not a ground to deny the maintenance. The amount of maintenance can be assessed with some guess work based on some materials placed before the Court. When the relationship between the petitioner and respondent as wife and husband is not in dispute and admittedly the petitioner was constrained living separately, then it is the legal obligation on the part of the respondent to maintain his wife. In view of the fact that three children are living with the respondent/husband is not a ground to deny maintenance for the wife/petitioner.

11. Considering the evidence on record and the fact that the respondent/husband is having agricultural properties and doing coconut business as alleged by the petitioner/wife for which there is no proof, Ex.P.2 the four RTC extracts, prove that the respondent/husband is the owner of agricultural land and is cultivating coconut trees and in all probabilities, the respondent/husband is proved to be financially viable. Accordingly, an amount of Rs.8,000/- is liable to be paid by the respondent to the petitioner as maintenance till her life time or re-marriage.

12. In the result, I pass the following:



ORDER

- i) Petition is allowed;
- ii) The order dated 17.3.2018 passed in C.Mis.32/2017 by the Principal Judge, Family Court, Tumakuru, is hereby set aside;
- iii) The respondent/husband shall pay the maintenance of Rs.8,000/- per month to the petitioner/wife from the date of petition till her life or till she re-marries.
- iv) No cost.

**Sd/-
JUDGE**

NSU
List No.: 1 Sl No.: 21
CT:SNN