



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE HANCHATE SANJEEVKUMAR**

**REV. PETITION FAMILY COURT NO. 192 OF 2016**

**BETWEEN:**

1. MAMATHA  
W/O RAJASHEKARAIHAH,  
D/O ADAVEESHAIAH,  
AGED ABOUT 31 YEARS,
2. PALLAVI  
D/O RAJSEHKARAIHAH,  
AGED ABOUT 8 YEARS,  
MINOR REPRESENTED BY HER  
MOTHER N/G, MAMATHA

BOTH ARE R/AT HONASINGERE VILLAGE,  
HEBBUR HOBLI,  
TUMKUR TALUK.

...PETITIONERS

(BY SRI. K SRINIVASA, ADVOCATE)

**AND:**

1. RAJASHEKHARAIHAH  
S/O LATE BASAVARAJU,  
AGED ABOUT 38 YEARS,  
R/AT KODIHALLI VILLAGE,  
KESTHUR POST,  
KORA HOBLI,  
TUMKUR TALUK – 572 138.

...RESPONDENT

(BY SRI. CHIDAMBARA G S.,ADVOCATE)





THIS RPFC IS FILED UNDER SEC.19 (4) OF THE FAMILY COURTS ACT, 1984 AGAINST THE JUDGMENT DATED 20.08.2016 PASSED ON C.MIS. NO.378/ 2013 ON THE FILE OF THE PRINCIPLE JUDGE, FAMILY COURT, TUMKUR. DISMISSING THE SUIT FOR MAINTENANCE.

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

**ORDER**

The petition is filed by the wife and daughter challenging the order dated 20.08.2016 passed by the Principal Judge, Family Court, Tumakuru, in C.Mis.No.378/2013 thereby dismissing the petition filed by the wife and daughter for maintenance.

2. The respondent/husband has admitted that first petitioner is his wife, but has disputed that second petitioner is not his daughter. The Family Court has dismissed the petition filed for maintenance under Section 125 of Cr.P.C. Therefore, the wife and daughter are before this Court in this revision petition.

3. Heard the arguments of both sides and perused the materials on record.



4. The Family Court has dismissed the petition for maintenance on the reason that petitioner/wife has failed to prove the ill-treatment and desertion and Ex.P-2 - birth certificate is having suspicious circumstances regarding birth of the second petitioner to the respondent therefore rejected the maintenance petition.

5. Learned counsel for the petitioners submitted that due to ill-treatment and cruelty meted out by the respondent, petitioners were constrained to reside separately and just because complaint is not lodged before the police that is not the ground to disbelieve the case of the petitioners for desertion and ill-treatment by the respondent. Therefore, the petitioners being the wife and daughter are entitled to maintenance, as such, prays to allow the petition.

6. On the other hand, learned counsel for the respondent/husband submitted that the Family Court is correct in disbelieving Ex.P-2 - birth certificate and justifiably raised ground that the second petitioner is not



daughter of the respondent. Furthermore, the petitioner No.1 is working and receiving salary as per Ex.R-11 document being working as a tailor, therefore petitioner No.1 is capable to maintain herself. Hence, justified the order passed by the Family Court in dismissing the petition.

7. The respondent has admitted that the petitioner No.1 is his wife, but disputed the petitioner No.2 is his daughter. But the respondent has not produced any evidence to show that the petitioner No.2 is not his daughter. In other proceedings filed before the Civil Court, the respondent has filed application for DNA test making attempt to claim that petitioner No.2 is not his daughter, but such attempt is not made by the petitioner No.2 before the Family Court. Moreover, even though in other proceedings before the Civil Court there is no finding that the respondent is not biological father of petitioner No.2. Therefore, there is no evidence on the part of the respondent to show that petitioner No.2 is not his



daughter. There is some alteration in Ex.P-2 - birth certificate, but is found to be a minor correction not going to the core of case in affecting the status of petitioner No.2 being the daughter of respondent.

8. Family Court has committed an error in appreciating the evidence Ex.P-2 documentary evidence. It is submitted that the marriage of petitioner No.1 and respondent is solemnized in the year 2001 and as per the case of petitioner No.1 they have consumed their marriage for four years, but the petitioner No.2 has born in the year 2007. This cannot be the reason to disbelieve that petitioner No.2 is not the daughter of respondent. The status of respondent as husband and petitioner No.1 as wife is still alive. Till today, there is no divorce and the marriage between them is still subsisting. Therefore, the Family Court has committed an error in appreciating the evidence on record in true and correct perceptive manner, thus perverse in nature.



9. Exs.P-4 to P-13 are the RTC extracts which prove that agricultural lands stand in the name of parents of the respondent. The respondent has also share in the said properties. It is submitted that the said lands were acquired by the KIADB. When the lands are acquired, certainly respondent, his parents and brothers are entitled to receive the compensation. Therefore, this makes comparison of finance viability between the petitioner No.1 and respondent, which shows that the respondent is more financially viable person. Just because the wife is working as a tailor and receiving salary of Rs.7,000/- per month that cannot be reason to deny maintenance to her. Quite naturally the wife has to work to sustain the life when she is living along with child and when the wife is compelled to do work for sustaining her life for satisfying hungry of herself and child, that cannot be the reason for the respondent/husband not to maintain his wife and child.

10. Therefore, the respondent being husband of the petitioner No.1 and father of petitioner No.2 is liable to



maintain wife and child and even by doing physical labour work it is his responsibility to maintain his wife and child. Therefore respondent cannot shirk his responsibility of maintaining his wife and child. In this regard the Family Court is completely perverse, insensitive, being opposed to law and principle of law laid down by the Hon'ble Supreme Court. Hence, petition filed by the wife and daughter is liable to be allowed.

11. Accordingly, I passed the following:

ORDER

- (i) Revision petition is **allowed**.
- (ii) The order of Family Court is modified to the extent of awarding maintenance of Rs.5,000/- per month each to petitioner Nos.1 and 2 per month.
- (iii) Respondent is directed to pay maintenance of Rs.5,000/- per month to petitioner No.1/wife till her lifetime or till she remarries and Rs.5,000/- per month



to petitioner No.2/daughter till her marriage.

- (iv) No order as to costs.
- (v) If the respondent succeeds in proving that petitioner No.2 is not his daughter, then he is at liberty to file application for modification of the order.

**Sd/-**  
**JUDGE**

DR  
List No.: 1 Sl No.: 12