

IN THE HIGH COURT OF KARNATAKA CIRCUIT BENCH
AT GULBARGA

Dated this the 10th day of January, 2012

BEFORE

THE HON'BLE MR.JUSTICE N.KUMAR

RPFC No.578 OF 2011

BETWEEN:

Sri Anand S/o Govindappa Chalawadi
Age: 32 years, Occ: Hiring Business,
Of Own Vehicle and the agriculture,
R/o: Kalaburki, Tq: Basavan Bagewadi,
Dist: Bijapur. Pin: 586092.

... Petitioner

(By Sri. Sanganasava B. Patil. Advocate.)

AND:

1. Smt. Sujata @ Lata W/o Anand Chalwadi
Age: 26 years, Occ: ,
2. Aditya S/o Anand Chalawadi
Age: 7 years, Occ: Student.
3. Ankita D/o Anand Chalawadi
Age: 4 years, Occ: Nil.



4. Alok S/o Anand Chalawadi
Age: 2 years, Occ: Nil.

Respondents No.2 to 4 since minors
R/by their M/G.- Mother Respondent No-1
All are R/o: Yagapur Colony, Bijapur.

...Respondents

This RPFC is filed under Section 19(4) of Family Court Act R/w against the judgment dated 06-09-2011 passed in Crl. Misc.No.240/2011 on the file of the Judge, Family Court At Bijapur. Partly allowing the petition filed U/S. of 125 of Cr.P.C and etc.

This RPFC coming on for Admission this day, the Court made the following:


ORDER

The husband has preferred this review petition challenging the order passed by the Family Court which has awarded maintenance of Rs.2,000-00 to the wife and Rs.1000-00 to two minor children, contending that the amount awarded is on the higher side and it requires to be reduced.



2. The parties are referred to as they are referred to in the original proceedings.

3. The first petitioner was married to respondent on 08.12.2002 at Kalaburki village as per Hindu custom. Two sons and a daughter was born. When the petitioner developed illicit intimacy with Kasturi Chalawadi of his village, he started neglecting the petitioner and her children. It is the case of the wife that the husband did not take care of her and her children. On the contrary, was making demand for dowry and finally she and her children were forced out of the house. Therefore she went to her parents house. According to her, the husband owns 2 acres of land from which he earns about Rs.3 lakhs to Rs.4 lakhs income per annum. He also owns two jeeps and earns about Rs.1200-00 per day. Therefore she preferred a petition under Section 125 of Cr.P.C. before the Family Court claiming maintenance of Rs.4,000-00 per month for herself and Rs.2,000-00 per month to each of her children.



4. After service of notice, the respondent entered appearance. He admitted the relationship, birth of children, the fact that she was living in her parents house. He contends that he comes from a poor family. He owns two acres of dry land from which hardly he gets 4-5 bags of food grains. He has mortgaged the land and purchased the jeep. Now the loan is to the tune of Rs.4 lakhs to Rs.5 lakhs and he is unable to pay the loan instalments. He has repaid the loan by availing the loan from third parties. He has to look after his parents. He is ready to take back the petitioner. Therefore he sought for dismissal of the petition.

5. The Family Court framed the following points for consideration:

1) Whether the petitioners prove that, they being unable to maintain themselves are entitled to the maintenance from the respondent who has neglected their maintenance, despite having sufficient means?

2) What is the quantum of the maintenance, which the petitioners are entitled from the respondent?

3) What order?

6. The petitioner in support of her case examined herself as P.W-1 and examined two witnesses. Respondent examined himself as R.W-1 and produced two documents which are marked as Ex.R-1 and 2.

7. The trial Court after appreciating the aforesaid oral and documentary evidence on record held that marriage is admitted as also the birth of the children. The husband has income of Rs.1500-00 per day from the two jeeps and in all he is having income of Rs.10,000-00 to Rs.12,000-00 per month, both from the vehicle and from the agriculture. In the mean while, the second petitioner the eldest son has joined the respondent. Therefore, there is no necessity to pay maintenance to him. It also held that the husband is residing with Kasturi Chalawadi. This is sufficient cause for the wife to

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stay separately. Therefore it proceeded to award maintenance of Rs.2,000-00 to the wife and Rs.1000-00 each to two minor children.

8. The learned Counsel for the respondent-husband assailing the impugned order contends that when the respondent owns only two acres of land, the award of maintenance at the aforesaid rate is arbitrary and oppressive and therefore, it requires to be reduced.

9. I do not find any substance in the said contention. The evidence on record discloses that he has purchased jeeps worth Rs.4 lakhs. He contends that he has sold it. But nothing is produced to show the sale of jeeps. Even if his case is to be believed that he has not purchased two jeeps but one jeep, as rightly held by the trial Court, his income is Rs.1000-00 to Rs.1500-00 per day. Apart from that he also owns agricultural land. It is his case that he has mortgaged the property to raise loan. If it is so, it should be a very valuable property, otherwise,

the Bank would not have advanced loan on the basis of such security.

10. When once the marriage is admitted, children are born, he appears to have illicit connection with a lady by name Kasturi Chalawadi, a resident of same village, he cannot insist his wife to live with him. If she is living separately, it is for sufficient cause and she cannot be found fault with. Under these circumstances, keeping in mind the age of minor children and having regard to the present day cost of living, in fact the amount of maintenance awarded by the Family Court is on the lower side. In fact the Family Court observed that both the children are still young and they are yet to be admitted to school, therefore Rs.1000-00 awarded as maintenance to children is sufficient for the time being. Therefore award of Rs.2,000-00 to the wife and Rs.1000-00 to minor children who are yet to be admitted to school, as on today is proper and it cannot be said that it is on higher side. In that view of the



matter, I do not see any merit in this revision petition.

Accordingly, it is dismissed.

Sd/-
JUDGE

ksp/-