
(2014) 11 RAJ CK 0053
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7888/2014

Om Prakash

APPELLANT

Vs

Bheru Ram and Others

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Citation : (2015) 2 WLN 373

Hon'ble Judges : Sangeet Lodha, J.

Bench : Single Bench

Advocate : Rohitash Singh, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.?This writ petition is directed against order dt. 12.4.14 passed by the District Magistrate, Nagaur, whereby while allowing the appeal preferred by the petitioner partly, the order dt. 12.2.14 passed by the Sub Divisional Magistrate, Nagaur, has been modified and the amount of maintenance to be paid by the petitioner to his father, the first respondent herein, determined in exercise of the power conferred u/s. 5 of the Rajasthan Maintenance of Parents & Senior Citizens Act, 2007 (in short "the Act"), has been reduced from Rs. 1500/- per month to Rs. 1000/- per month. The first respondent, the father of the petitioner, filed an application seeking maintenance against the petitioner and his brother Bhanwara Ram u/s. 5 of the Act before the Sub Divisional Magistrate, Nagaur. The first respondent claimed maintenance a sum of Rs. 2000/- each from the petitioner and his brother. After due consideration of the material on record, the Sub Divisional Magistrate vide order dt. 10.2.14 directed the petitioner and his brother to pay a sum of Rs. 1500/- each to the first respondent. Aggrieved thereby, the petitioner preferred an appeal before the District Magistrate, Nagaur, which stands partly allowed by the order impugned and the amount of maintenance to be paid by the petitioner to the first respondent has been reduced from Rs. 1500/- to Rs. 1000/- per month.

2. Learned counsel for the petitioner submitted that the order impugned passed by the District Magistrate, maintaining the order passed by the Sub Divisional Magistrate, directing payment of maintenance to the extent a sum of Rs. 1000/- without there being any cogent evidence proving the income of the petitioner, is ex facie erroneous. Learned counsel submitted that the petitioner is a differently baled person and is not in position to earn and therefore, the order impugned passed by the District Magistrate without appreciating the factual position in correct perspective, is not sustainable in the eyes of law. Learned counsel submitted that the petitioner's brother Arjun Ram with whom the first respondent is residing, is in position to maintain him and therefore, the first respondent was not entitled to claim the maintenance from the petitioner.

3. I have considered the submissions of the counsel for the petitioner and perused the material on record.

4. Indisputably, the purpose behind the Act of 2007 is to extend help inter alia to the parents, who are unable to maintain themselves through their own earnings or out of their own property and are being neglected or refused to maintain by their children. It is not disputed before this Court that the father of the petitioner, the first respondent, is 70 years of age, and it is not the case of the petitioner before this Court that his father is in position to maintain himself out of his own money rather, it is claimed by the petitioner that his father is residing with his brother Arjun Ram, who having reasonable source of income, is in position to maintain him. It has come on record that the first respondent has given 20 bighas land to each to his all the three sons and thus, besides the income from other sources, the petitioner and his brothers have the income from agriculture as well and therefore, the petitioner cannot shirk from his responsibility to give maintenance allowance to the first respondent altogether.

5. No hard and fast rule can be laid down for determination of the amount of maintenance. The absence of strict proof regarding the income of the persons liable to pay the maintenance allowance cannot be a ground for denial of maintenance. The amount of maintenance payable under the provisions of the Act includes proper food, shelter, clothing and medical treatment. Thus, it goes without saying that a reasonable sum has to be awarded in favour of the person claiming the maintenance keeping in view the totality of the facts and circumstances of each case.

6. In the instant case, having regard to the agriculture land in possession of the petitioner and considering other relevant aspects of the matter, in considered opinion of this Court, the amount of maintenance allowance payable by the petitioner to his father, the first respondent, determined by the Sub Divisional Magistrate, reduced by the District Magistrate from Rs. 1500/- per month to Rs. 1000/- per month, cannot be said to be excessive so as to warrant interference by this Court in exercise of its extra ordinary jurisdiction. In the result, the writ petition is dismissed in limine.