
(2016) 03 KL CK 0122
In the High Court Of Kerala
Case No : W.P. (C) No. 4981 of 2015 (W)

Reju and Others

APPELLANT

Vs

The Maintenance Tribunal and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Constitution of India, 1950 — Article 41

Citation : (2016) 163 AIC 467 : (2016) AIR(Kerala) 97 : (2016) 2 CivCC 586 : (2016) 3 DMC 545 : (2016) 2 KerLJ 377 : (2016) 2 KHC 429 : (2016) 2 KLT 264 : (2016) 3 RCRCivil 66

Hon'ble Judges : A. Muhamed Mustaque, J.

Bench : Single Bench

Advocate : Shajin S. Hameed, Advocate, for the Appellant; Manoj Kunjachan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

A. Muhamed Mustaque, J.—1. The petitioner, challenging an order passed by the Maintenance Tribunal, constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (for short, the "Senior Citizens Act"), has approached this Court.

2. By the impugned order, the petitioners have been directed to provide "welfare measures" to the third respondent.

3. The case of the petitioners is that they are not liable to provide any maintenance or basic amenities to the third respondent. It is their case that the third respondent is not their parent nor would he come within the biological father/adopted or step father and therefore, the application filed by the third respondent before the Maintenance Tribunal is not maintainable.

4. The case of the third respondent, who is the complainant before the Tribunal, is that he married to the mother of the petitioners, namely, Devaki as per Ext. R3B and he expended a large sum of money for the upkeep of immovable

properties as well as, the well being of the petitioners and therefore, he is entitled for the benefits referred in the impugned order. It was also argued that the petitioners cannot approach this Court bypassing the remedy of appeal under Section 16 before the appellate authority.

5. Heard the learned counsel for the petitioners as well as the learned counsel for the third respondent.

6. One of the arguments raised by the learned counsel for the petitioners is that the third respondent cannot legally marry their mother as he had a subsisting marriage at the time of co-habitation with the mother of the petitioners. It is further submitted that the third respondent has a son by name Vishnu. It is further argued that nowhere in the Senior Citizens Act, a liability is cast upon the children of the women, with whom the senior citizen had a relationship, to maintain such senior citizen.

7. The object of the Senior Citizens Act is to protect and to provide effective provisions for the maintenance and welfare of parents and senior citizens. Under Part IV of the Constitution of India in terms of Article 41, the State has a duty to take effective measures to secure the well being of a citizen during his old age.

8. This is a peculiar case, the facts otherwise would disclose that the third respondent is not the biological father and he has a biological son named Vishnu, in his wedlock. It appears that said Vishnu is working as a Project Manager. However, the Tribunal taking note of the fact that the senior citizen was residing with the mother of the petitioner, he was permitted to stay in that residence without any obstruction. There is no order to pay monetary maintenance to the Senior Citizen. In such circumstances, the only question is whether the measures ordered by the Maintenance Tribunal require any interference by this Court or not.

9. It is apposite to refer Section 2(k) of the Senior Citizens Act, which defines "welfare" as follows:

"(k) "welfare" means provisions for food, health care, recreation centres and other amenities necessary for the senior citizens."

10. The main argument of the petitioners is that the petitioners are not biological children of the senior citizen. They refer to the definition of "children" as well as definition of "parent" and point out that the relationship between the petitioners and the senior citizen do not come within the above definition and therefore, the senior citizen cannot raise any claim against the petitioners. The petitioners also refer to the definition of "relative" and submits that since the senior citizen has a son and there is no scope for inheritance of the property of the senior citizen after his death, by the petitioners, to bring within the fold of "relative".

11. The above argument though appears to be meritorious, going by the nature of provisions in the Senior Citizens Act regarding maintenance, these arguments would have a relevance if there is an order to pay maintenance. Further, the order passed by the Maintenance Tribunal would show that it has passed the

order in terms of Section 2(k) of the Senior Citizens Act for providing "welfare measures" rather than invoking provision for maintenance under Section 2(b) of the Senior Citizens Act. The welfare measures can be imposed against any person, based on the accepted relationship between the parties involving mutual obligations for a considerable time though such persons may not have legal obligation to pay the maintenance. The maintenance, of course, can be ordered only against the persons mentioned as "children" or "relative" as defined under the Senior Citizens Act. Though, there is no special provision for providing "welfare" to the senior citizen, the scheme of Senior Citizens Act itself gives a room for the Tribunal to protect the "welfare" of a senior citizen. It is open for the Tribunal to impose a liability for providing "welfare measures" on whom the Tribunal deems fit that it can be imposed, based on the accepted relationship between the parties. Otherwise, the very purpose of the Act would be defeated. Thus, it has to be concluded that the direction as ordered in the impugned order is only a direction to provide "welfare measures" and not as maintenance and such measures can be imposed against any persons, whom the Tribunal deems fit in circumstances and for sufficient reasons, though, such persons would not come within the ambit of "children" or "relative" as defined under the Senior Citizens Act. In this case, the facts disclosed clearly establish that the mother of the petitioners and the petitioners had an accepted relationship involving mutual obligations with the senior citizen. Therefore, this Court is of the view that the writ petition must fail and accordingly, the same is dismissed.