

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR.JUSTICE R DEVDAS

RPFC NO.23/2017

C/W

RPFC NO.158/2015

IN R.P.F.C. NO.23 OF 2017

BETWEEN

- 1 . SMT P B TANUJA
W/O DR S V THIRUMALARAJU,
AGED ABOUT 35 YEARS,
- 2 . BABY MONISHA
D/O DR S V THIRUMALARAJU
AGED ABOUT 11 YEARS,

MINOR- REPRESENTED BY NATURAL
GUARDIAN - NEXT FRIEND - MOTHER
P B TANUJA, THE 1ST PETITIONER

BOTH ARE RESIDING AT
C/O MAHALINGAPA
KODI BASAVESWARA NILAYA
1ST CROSS, GOKULA ROAD,
NEAR SHETTIHALLY GATE
S. I. T. EXTENSION,
TUMKUR 572103

...PETITIONERS

(BY SRI V B SIDDARAMAIAH, ADVOCATE)

AND

DR S V THIRUMALARAJU
S/O VENKATESHAIAH
VETERINARY OFFICE,
VETERINARY DISPENSARY

CHIKKABELAVANGALA - 561203
DODDABALLAPURA TALUK,
BANGALORE RURAL DISTRICT

...RESPONDENT

(BY SMT MANJULA N TEJASWI, ADVOCATE)

THIS RPFC IS FILED UNER SECTION 19(4) OF THE
FAMILY COURTS ACT, AGAINST THE JUDGMENT & DECREE
DATED 27.06.2015 PASSED IN C.MISC.NO.260/2013 ON THE
FILE OF THE PRL. JUDGE, FAMILY COURT, TUMKUR,
PARTLY ALLOWING THE PETITION FILED UNDER SEC.125 OF
CR.P.C. FOR MAINTENANCE.

IN R.P.F.C. NO.158 OF 2015

BETWEEN

DR. S.V THIRUMALARAJU
S/O VENKATESHAIAH
VATERINARY OFFICE,
VETERINARY DISPENSARY,
CHIKKABELAVANAGALA,
TQ:DODDABALLAPUR
BENGALURU RURAL DISTRICT
PIN CODE – 561203

...PETITIONER

(BY SMT MANJULA N TEJASWI, ADVOCATE)

AND

- 1 . P.B. TANUJA
W/O DR. S.V.THIRUMALARAJU
AGED ABOUT 38 YEARS,
- 2 . MONISHA
D/O DR.S.V.THIRUMALARAJU
AGED ABOUT 8 YEARS,
MINOR
REPRESENTED BY HER MOTHER
RESPONDENT NO.1 NATURAL GUARDIAN
BOTH ARE RESIDENTS OF
C/O MAHALINGAPPA
KODI BASAVESHWARA NILAYA,
1ST CROSS, GOKULA ROAD,
NEAR SETTIHALLY GATE,
S.I.T.EXTENSION,
TUMKUR PIN CODE- 572101.

...RESPONDENTS

(BY SRI V B SIDDARAMAIAH, ADVOCATE)

THIS RPFC IS FILED UNER SECTION 19(4) OF THE FAMILY COURTS ACT, AGAINST THE JUDGMENT & DECREE DATED 27.06.2015 PASSED IN C.MISC.NO.260/2013 ON THE FILE OF THE PRL. JUDGE, FAMILY COURT, TUMKUR, PARTLY ALLOWING THE PETITION FILED UNDER SEC.125 OF CPC.

THESE PETITIONS ARE COMING ON FOR FINAL DISPOSAL THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

R. DEVDAS J., (ORAL):

Both the parties before the Trial Court in C.Misc.No.260/2013 are before this Court in revision calling in question the order dated 27.06.2015 passed by the Principal Judge, Family Court, at Tumakuru, in C.Misc.No.260/2013.

2. The parties herein are referred to as per their ranking in RPFC No.23/2017 for the sake of convenience.

3. The admitted facts are that the marriage between the first petitioner-wife and the respondent-husband was performed on 07.06.2002 at Veerashiva Kalyana Mantapa, Tumakuru. The second petitioner was born out of the wedlock on 18.01.2006. The

respondent is a Veterinary Officer, while the first petitioner herein secured appointment as Junior Engineer, in the Irrigation Department of the Government of Karnataka on 30.09.2009, during the pendency of the Criminal Miscellaneous petition. It is also an admitted fact that a decree of divorce was granted on 03.09.2010, separating the first petitioner and the respondent. Subsequent to the decree of divorce granted by the competent authority, the first petitioner got remarried on 06.03.2011, while the respondent got remarried on 02.05.2010. It is submitted by the learned Counsel for the respondent that the respondent got married to a widow who already had two children out of her previous marriage. During the course of the argument, it was also admitted by the learned Counsel for the respondent that the step daughter of the respondent was married during the year 2015, while the stepson who had completed Diploma, is now studying for Engineering Graduation.

4. The learned Counsel for the first petitioner submits that the respondent was earning gross salary of Rs.23,052/- as per the salary certificate dated 17.06.2010. As per the salary certificate dated 15.08.2013, the gross salary of the respondent was Rs.41,020/- as per Ex.P7 and P7(a). RTC extracts were also produced before the Trial Court to substantiate the contention of the petitioners that the respondent and his family owned 48 acres of agricultural land. Having regard to the evidence on record, the Trial Court awarded maintenance of Rs.4,000/- p.m. to the second petitioner. Being aggrieved by the award of maintenance, both the parties are before this Court calling in question the impugned order passed by the Trial Court.

5. Learned Counsel for the petitioners submits that the Trial Court has erred in appreciating the evidence on record and has granted a meager maintenance of Rs.4,000/- p.m. to the second petitioner. Moreover, it is submitted that even as per the appointment order of the first petitioner, she was

appointed on 30.09.2009 as a Junior Engineer, therefore, it was incumbent upon the Trial Court to have awarded maintenance to the first petitioner till the date of her appointment, from the date of the petition. Further, since it was submitted by the learned Counsel for the respondent that the respondent has an additional responsibility of taking care of the second wife, two step children and his ailing mother, the learned Counsel for the petitioners submitted that the step daughter was married in the year 2015 and therefore to that extent, the responsibility of the respondent has lessened. Further more, it is submitted that the respondent's father was a retired Tahsildar and the mother is getting family pension to take care of herself. Further, during the course of the arguments, the learned Counsel for the petitioners has filed a memo dated 28.02.2020 along with copies of the salary certificate and bank statement of the first petitioner which would show that the gross salary of the first petitioner is Rs.47,662/- and after deduction of

Rs.15,302/- the take home salary of the first petitioner is Rs.32,360/- p.m. Further, having regard to the bank statement, it is stated that a sum of Rs.15,000/- is paid from out of the net salary towards home loan. Learned Counsel would further point out from the salary certificate of the month of January 2020 pertaining to the respondent-husband that the respondent is getting a gross salary of Rs.92,206/-. However, since income tax deduction of Rs.30,000/- has been shown along with the other standard deductions, it is submitted by the learned Counsel for the petitioners that the take home salary of the respondent is around Rs.76,000/- p.m. The learned Counsel therefore submits that keeping in mind the present take home salary of the respondent, the maintenance is required to be enhanced.

6. Per contra, the learned Counsel for the respondent submits that the respondent is required to take care of the second wife, the stepson who is now studying in an Engineering College and the ailing mother. It is submitted by the learned Counsel

that it is never the intention of the respondent to shirk his responsibility to take care of the well being of the second petitioner-daughter. Towards the arrears of maintenance, the learned Counsel for the respondent further fairly submits that there may be arrears of Rs.48,000/- which will be paid to the second petitioner, at the earliest. Nevertheless, it is submitted by the learned Counsel for the respondent that the contention of the petitioners that while arriving at the maintenance to be paid to the petitioners, the landed property of the respondent's family also should be taken into consideration, cannot be countenanced. It is submitted that the respondent has no agricultural land in his name. In this regard, the second petitioner has also filed suit for partition through the first petitioner-mother and natural guardian seeking partition of the joint family properties claiming a share out of the respondent father's share in the joint family properties. The learned Counsel therefore submits that as and when the suit is decreed and if it is found that the

respondent has a share in the joint family properties, the share of the second petitioner will also be considered in accordance with law by the Court which is dealing with the suit. Therefore, it is submitted that while considering the maintenance payable to the second petitioner, this Court should bear in mind the responsibilities of the respondent towards the other family members.

7. Having heard the learned Counsels and having perused to petition papers, this Court is of the considered opinion that the Trial Court should have awarded maintenance to the first petitioner from the date of the petition till the date of the appointment of the first petitioner as Junior Engineer i.e., till 30.09.2009. In this regard, the respondent is required to pay monthly maintenance at the rate of Rs.5,000/- p.m. for sixteen months between the date of petition till the date of appointment of the first petitioner. The same shall be paid without interest so that the difference in the salary that was being earned by the respondent as on the date of petition

when compared to what he is earning today will be evened out.

8. As regards payment of maintenance to the second petitioner, this Court having regard to the overall circumstances of this case, is of the considered opinion that annual maintenance of a sum of Rs.1,00,000/- is required to be paid by the respondent to the second petitioner. The said sum shall be paid to the second petitioner until she secures a job and becomes independent or till the date of her marriage, whichever is earlier. The said amount shall be deposited into the account of the first petitioner in the Savings Bank Account No.64051894762 at State Bank of India Main Branch, Tumakuru, between 1st April and 10th April 2020 and the same shall be followed in every subsequent year.

9. The arrears of maintenance towards the first petitioner that has been ordered by this Court shall also be paid by the respondent including the arrears

of maintenance of Rs.48,000/- payable to the second petitioner, on or before 10th July 2020.

10. In view of the disposal of the main petitions, I.A.s if any, do not survive for consideration and the same stands disposed of.

It is ordered accordingly.

**Sd/-
JUDGE**

JT/-