



2023:KER:52070

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SOPHY THOMAS

THURSDAY, THE 24TH DAY OF AUGUST 2023 / 2ND BHADRA, 1945

MAT.APPEAL NO. 782 OF 2022

AGAINST THE JUDGMENT AND DECREE DATED 15.10.2022 IN

O.P.NO.661/2021 OF FAMILY COURT, MALAPPURAM

APPELLANT/PETITIONER:

CHANDI SAMUVAL

BY ADVS.
ALEX.M.SCARIA
BEAS K. PONNAPPAN
A.J.RIYAS
SARITHA THOMAS
ALEN J. CHERUVIL
SAHL ABDUL KADER
SANJITH KUMAR R.

RESPONDENTS/RESPONDENTS:

1 SAIMON SAMUVAL

2 SUNIL C.S.

BY ADV.P.VENUGOPAL (1086/92)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
26.07.2023, THE COURT ON 24.08.2023 DELIVERED THE
FOLLOWING:

**CR****A.MUHAMED MUSTAQUE & SOPHY THOMAS, JJ.****Mat.Appeal No.782 of 2022****Dated this the 24th day of August, 2023****J U D G M E N T****A.Muhamed Mustaque, J.**

“Wisdom belongs to the aged and understanding to the old [Job 12:12].

2. An octogenarian Christian failed before the Family Court, Malappuram against his children for arrears of maintenance on the ground that no law prescribes a Christian would be entitled to past maintenance. We thought the family court was right as there were no statutory provisions prescribing the same, but we probed many law and principles to understand the claim for maintenance. Is it a requirement that to claim maintenance there should be a positive law? We find the reasons recorded hereafter that, to claim past maintenance positive law is not a prerequisite.



3. The parties are Christians by faith. There is no statutory provision that prescribes the duty of the children to pay maintenance to the father in his old age as per the statutory law. Even under the Indian Christian Marriage Act, 1872, the grant of maintenance to the wife and children is silent. Karnataka High Court noting the silence in the above statutory provisions had taken the view that the court will have to strive to redress the grievances by adopting the principles of equity natural justice and good conscience (see the views of the Karnataka High Court in **K. Kumar v. Leena [(2010) 0 AIR (Kar) 75]**).

4. Under the Maintenance and welfare of Parents and Senior Citizens Act, the maintenance can only be claimed prospectively after the date of application for maintenance. Similar is the provision under Section 125 of the Criminal Procedure Code.

5. The law is nothing but principles that are implicit in the relationships formed privately through practices, traditions and culture. Some legal principles followed in society in past may have gotten statutory recognition through legislation. In a country where the social order is defined by the practice of the community



or that of a denomination adhering to a long standing religious norms and precepts, the court will have to recognize those norms and precepts creating such relationship in that social order.

In Holy Bible it is written as:

“Honor your father and mother” (this is the first commandment with a promise), “that it may go well with you and that you may live long in the land.[Ephesians 6:2-3]

Listen to your father who begot you, And do not despise your mother when she is old” [Proverbs 23:22]

But if anyone does not provide for his relatives, and especially for members of his household, he has denied the faith and is worse than an unbeliever”. [Timothy 5:8]”

In the Universal Declaration of Human Rights under Article 25, it was declared as follows:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.



Under Article 41 of the Indian Constitution, Though one may think that it is the duty of the State to provide measures to secure the needs of senior citizens during their old age, we cannot ignore the principles in a social order creating an obligation on the children to maintain their parents during old age. It is appropriate to refer to the views of Ronald Dworkin, expressed in Taking Rights Seriously about the judges' role in making decision and using discretion:

“The law does not simply state what private citizens ought or ought not to do; it provides what they have a duty to do or no right to do. It does not, moreover, simply advise judges and other officials about the decisions they ought to reach; it provides that they have a duty to recognize and enforce certain standards. It may be that in some cases a judge has no duty to decide either way; in this sort of case we must be content to speak of what he ought to do. This, I take it, is what is meant when we say that in such a case the judge has 'discretion'. But every legal philosopher, with the exception of the most extreme of the American legal realists, has supposed that in atleast some cases the judge has a duty to decide in a particular way, for the express reason that the law requires that decision.(page No.48)”

6. The court cannot ignore the social rules that binds the social order in the light of the faith professed by parties, and generally based on the international instruments and professed promise declared



in the Constitution. Ronald Dworkin championed the idea that the law is whatever follows on a constructive interpretation of the institutional history of the legal system. In his book titled 'Law's Empire' he reiterated that the judges interpret law with consistent moral principles that are followed in the society. Ronald Dworkin refers to famous case decided by the court of Appeals of New York State in **Riggs v. Palmer** [115 N.Y.506 (1889)] and elucidate its reasoning as follows:

“First it is sensible to assume that legislators have a general and diffuse intention to respect traditional principles of justice unless they clearly indicate the contrary. Second, since a statute forms part of a larger intellectual system, the law as a whole, it should be constructed so as to make that larger system coherent in principle (Law's Empire, Page No.19).”

If the law entitles a senior citizen in old age the claim for maintenance prospectively, it does not mean the law negates the claim for past maintenance. A man with self-respect might have resisted himself in approaching the court at first instance on a belief that his children would respect his needs. His patience and respect for the children cannot be encashed to deny his claim for past maintenance. The social order that gives rise to the legal order in this country carefully



narrates the traditional practice. Even without any positive aid of law the court could have recognized the right of the elder irrespective of the religion to claim the past maintenance and future maintenance. Merely for the reason that the legislation had only provided measures for the award of prospective maintenance, that cannot result in denial of the claim for past maintenance.

7. We, thus, *set aside* the impugned order and remand back the matter to the Family Court for fresh consideration on merits. The parties are directed to appear before the Family Court on 12.09.2023. Thereafter, the Family Court is directed to dispose of the case within a further period of two months.

The Mat.Appeal is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SOPHY THOMAS, JUDGE