

IN THE COURT OF THE JUDGE, FAMILY COURT,
BHUBANESWAR.

Present : Shri Pravakar Mishra, OSJS(SB),
Judge, Family Court, Bhubaneswar.

Criminal Proceeding No. 219 of 2011

Laxmidhar Nayak, aged about 81 years,
S/o-Late Ananta Nayak,
of Vill.-Gaudakasipur (Alkar), P.O.-Janla,
P.S.-Jatni, Dist-Khurda,
At present residing C/o.- daughter Nirupama Mohapatra,
W/o-Bijay Mohapatra,
At-Vill.-Gangapada, P.O.-Janla, P.S.-Jatni,
Dist-Khurda.

... Petitioner

... Versus...

Haribandhu Nayak, aged about 50 years,
S/o- Laxmidhar Nayak,
of Vill.-Gaudakashipur, (Alkar),
P.O.-Janla, P.S.-Jatni,
Dist-Khurda.

... Opp. Party

Date of Argument: 28.08.2014

Date of Judgment : 11.09.2014

J U D G M E N T

This order arises out of a petition u/s. 125 of the Code of Criminal Procedure (in short, Cr.P.C.) filed by the petitioner Laxmidhar Nayak claiming monthly maintenance of Rs. 5,000/- for himself from the Opp. Party.

2. The facts of the case of the petitioner are follows:-

The petitioner is the father of the Opp. Party. He is by profession a Nahak i.e. Astrologer and is now old and unable to maintain himself having no source of income. The petitioner has averred that due to old age ailments unable to do his day to day work to earn his livelihood. He has the landed property i.e. the homestead land measuring Ac. 0.370 decimals appertaining in Plot No. 418 under Khata No. 180 of Mouza Alkar under police station Jatni,

district Khurda. He has no other landed property. Two years back the Opp. Party refused to provide him fooding and bare necessities for which he has been taking shelter of his married daughter in village Gangapada with much inconvenience who she is not financially sound enough to maintain him. He has averred that due to old age diseases he has been taking medicine of Rs. 2,000/- per month since last two years and obtained private loan of Rs. 80,000/- by taking such medicines. According to him, the Opp. Party is a able bodied energetic person and is having several business like Real Estate out of which he is earning Rs. 50,000/- per month. Besides, he is owner of an Indica Car and by using it as Taxi he earns Rs. 20,000/- per month. Since the Opp. Party having sufficient means will-fully neglected and refused to maintain the petitioner, who is his natural father, the petitioner is obliged to file the present petition claiming a monthly maintenance of Rs. 5,000/- for self from the Opp. Party.

3. The Opp. Party entered contest the petition admitting that the petitioner is his father and denied all the allegations made by the petitioner. He has stated that the petitioner has independent source of income. He has further stated that he has filed a suit for partition before the Civil Judge, Jr. Division, Bhubaneswar and the said case has been dismissed and taking such advantage the petitioner and his another son namely Ramachandra Nayak executed a General Power of Attorney in favour of other on 01.02.2011 and is taking law into his own, committed criminal intimidation and molestation towards the wife of the Opp. Party. He has further stated that the petitioner's other son Ramachandra is working in A.G. Office and is earning Rs. 15,000/- per month and is looking after the petitioner. Further he has stated that the petitioner is earning Rs. 10,000/- per month as an Astrologer. Apart from that he is earning Rs. 10,000/- per annum from agricultural source and as such the petitioner is not depending on others.
4. From the rival contentions of both the parties, the following issues are settled for adjudication:
 - (i) Whether the petitioner has no sufficient means to support himself?
 - (ii) Whether the Opp. Party having sufficient means willfully refused or

neglected to maintain the petitioner?

(iii) What would be the quantum of maintenance to be allowed to the petitioner for her maintenance per month?

5. In order to substantiate the stand, the petitioner himself has been examined as P.W.1 and his daughter namely Nirupama Mohapatra as P.W. 2. In order to counter the claim of the petitioner, the Opp. Party himself has been examined as O.P.W.1. It is an admitted fact that petitioner is the father of the Opp. Party and he is staying separately. P.W. 1 stated that he is depending on her daughter for maintenance and he has no means of income as he is suffering from several old age diseases. He has stated that the Opp. Party is getting Rs. 30,000/- per month from letting a Car. Apart from that he has some income from land brokering business. P.W. 2 has supported the evidence of the P.W. 1.
6. O.P.W. 1 has admitted that the petitioner is his father. He has stated that he had filed a civil suit for partition of family property which was dismissed. He has further stated that on 21.2.2011 his father, brother and sister sold their land for Rs.12,00,000/- for which he has filed T.S.183/2011 in which the Court has granted status quo in respect of the suit property. According to him, from the date of sale, the petitioner is staying with his daughter. He has further stated that he is a labour by profession and earned Rs. 3000/- to Rs.4000/- per month. He has got four daughters and one son and is facing difficulties to maintain them. He has stated that the petitioner is a priest and is earning Rs.7,000/- toRs.8,000/- per month. Apart from that the petitioner is getting interest by pledging money of Rs.12,00,000/-.
7. P.W. 1 has admitted that the Opp. Party was keeping him properly when he was staying with him. He has also admitted that he has sold a piece of land at Rs. 12,00,000/-. There has been no evidence what P.W. 1 did with that money even has given a part of that money to the Opp. Party. That means that he has kept that money with him. Therefore, it cannot be said that he has no sufficient means to maintain himself. When the petitioner is self sufficient, he is not entitled to get any maintenance from the Opp. Party. Hence, ordered:

ORDER

The petition is of the petitioner is dismissed but without cost on contest in favour of the Opp. Party but without cost.

JUDGE, FAMILY COURT,
BHUBANESWAR.

Dictated, corrected by me and is pronounced on this the 11th day of September, 2014.

JUDGE, FAMILY COURT,
BHUBANESWAR.

List of witness on behalf of petitioner

P.W. 1 Laxmidhar Nayak,

P.W. 2 Nirupama Mohapatra

List of witness on behalf of Opp. Party

O.P.W. 1 Haribandhu Naik

List of exhibits on behalf petitioner

Ext.1 Copy of R.C. Book of Indica Car.

List of exhibits on behalf of Opp. Party

Nil

JUDGE, FAMILY COURT,
BHUBANESWAR.