

**IN THE COURT OF THE III ADDL. JUDICIAL MAGISTRATE OF I CLASS,
ONGOLE.**

Present: Smt. D.Durga Kalyani,
III Addl. Judl. Magistrate of First Class, Ongole.

Tuesday, this the 05th day of May, 2015.

D.V.C.No.11 of 2014.

1. **Ballikurava Kiranmayi** w/o Anjaneyulu,
Hindu, 22 years,
2. **Ballikurava Blysi** d/o Anjaneyulu, Hindu,
aged 2 years,
Being Minor rep. by natural guardian mother
1st petitioner.

Both are residents of Throvagunta village,
Ongole Mandal, Prakasam District.

... Petitioners.

Vs.

1. **Ballikurava Anjaneyulu** s/o Hanumantha Rao,
Hindu, 27 years, Mason Mastry, Resident of
Kamepalli village, S.N.Padu Mandal.
2. **Ballikurava Hanumantha Rao** s/o Kotaiah,
Hindu, 47 years, Resident of Kamepalli (V),
S.N.Padu Mandal, Prakasam District.
3. **Ballikurava Ramanamma** w/o Hanumantha Rao,
Hindu 42 years, Resident of Kamepalli village,
S.N.Padu Mandal, Prakasam District.
4. **Bontha Kalyani** w/o Kotilingam, Hindu,
25 years, Resident of Throvagunta village,
Ongole Mandal, Prakasam District.
5. **Bathula Krishnaveni** w/o Ashok, Hindu,
24 years, Alluru village, Kothapatnam Mandal,
Prakasam District.

... Respondents.

This petition is coming on 28.04.2015 for hearing before me in the presence of Sri **K.Theppalaneedu**, Advocate for Petitioners and of Sri **D.V.Vasishta**, Advocate for Respondents and; upon perusing the oral evidence on record and upon perusing the arguments on both sides and having stood over for consideration till this day, this Court made the following:-

// O R D E R //

1. This is an application filed by the petitioners U/Sec.12 of the Protection of Women from Domestic Violence Act, 2005, against the

respondents 1 to 5, to give share in the house of respondents for residence, to allot share in the lands, to provide maintenance of Rs.10,000/- for their food, clothing and day to day essentials, to grant protection orders and for compensation.

2. Brief facts of the application are as follows:

It is submitted by the 1st applicant that she has been married with 1st respondent on 05.08.2009 as per Hindu Rites and Customs. After marriage she joined the 1st respondent and proceeded to her matrimonial home to lead marital life with the 1st respondent. They lived happily and out of their wedlock the 1st applicant has given birth to 2nd petitioner. While so, the 1st respondent started harassing the 1st petitioner by addicting to bad vices. In that regard he used to visit the house in late hours in drunken state. Whereas the other respondents used to harass 1st petitioner to bring money from her parental house. Even though the 1st petitioner adjusted with the 1st respondent and continued to live with him keeping in mind about the future of 2nd petitioner. Even then all the respondents used to ill-treat the 1st petitioner and made her suffer mentally. At one instance all the respondents necked out the 1st petitioner from her matrimonial home and demanded her to bring money. At that juncture having no other alternative petitioner came to her parental house. Since then the respondents failed to provide maintenance to the petitioners.

With regard to the means of the respondents the petitioner submits that the respondents are well settled and own a house. Besides that the 1st respondent is earning an amount of Rs.500/- per day by doing mason works. It is also mentioned by petitioner that the respondents 4 and 5 also resides in the house along with respondents 1

to 3. It is further submitted by her that she is in need of house and cash for their shelter etc., and she also got a share in the house where the respondents are living at present. Hence, she has constrained to file this petition praying this court to direct the respondents :

1. to give share in the house for residence,
2. to allot share in the lands,
3. to provide maintenance of Rs.10,000/- for their food, clothing and day to day essentials,
4. to grant protection orders,
5. to grant compensation and also to direct the respondents to give articles to her to live separately.

3. On the other hand counter is filed by the respondents denied the averments of the petitioner. It is submitted by him that the petitioner filed a criminal case against respondents in C.C.No.125/2014 on the file of Spl. Mobile Court, Ongole and also maintenance case in which order was passed on 03.09.2014 by concerned Court granting maintenance of Rs.1,500/- per each per month to both the petitioners. He also submits that the respondents 2 to 5 are living separately and petitioner intentionally implicated the said respondents to harass them. Further this respondent is living separately and earns an amount of Rs.5,000/- per month by doing coolie work and he has no properties as alleged by petitioner. The petitioner herself is high handed and adamant towards the respondent. While so, the petitioner and respondent set family in Mangamur Donka of S.N.Padu Mandal. There the petitioner herself left the petitioner and filed a criminal case, maintenance case and a case under Domestic Violence Act. Even till today the respondent is residing in Mangamur Donka waiting for the petitioner to lead marital life with her. But she refused to join him. As such the respondents have no

house and any bank balances in their name. Hence, he sought for dismissal of the petition.

4. Basing on the above pleadings the following points are framed for determination :-

1. Whether the petitioners are entitled for share in the house as well as lands towards their residence.
2. Whether the petitioners are entitled for maintenance of Rs.10,000/- per month towards their food clothing and day to day essentials.
3. Whether the petitioner is entitled for protection orders and compensation.

5. During the course of trial, the petitioner examined herself as P.w.1 and her father as P.w.2. No documents are marked in her evidence. Coming to the respondent, he examined himself as R.w.1 and exhibited Exs.R1 and R2 on his behalf.

Point No.1 :

6. To establish this point the petitioner as P.w.1 deposes elaborately in her chief examination as follows:

That she was married with the 1st respondent on 05.08.2009 as per Hindu Rites and Customs. After marriage she joined 1st respondent and proceeded to her matrimonial home. After consummation of marriage out of her wedlock the 2nd petitioner was born to them. Subsequent to that the 1st respondent started harassing her by addicting to bad vices. In that regard he used to visit the house in late hours in drunken state. In addition to that all the respondents used to reside with 1st respondent and used to harass her to bring additional money from her parents house. At one instance all the respondents necked out

her from her matrimonial home demanding to bring money. Having no other alternative she approached to her parents house and has been residing there since then. As her parents are not in a position to fulfill the demands of the respondents she has filed this petition as the respondents are well settled, own house and bank balance. It is also deposed by her that the respondents 4 and 5 are also having residential house along with respondents 1 to 3. So, she has share in the said houses and hence she has constrained to file this petition praying the court to direct the respondents to give share in the house, protection orders and also compensation towards her mental agony.

7. To support her version she examined P.w.2/her father who deposed that he performed the marriage of 1st petitioner with the 1st respondent in the year 2009 and after birth of 2nd petitioner the 1st respondent started harassing her daughter by addicting to bad vices and demanding to bring extra money. At that juncture all the respondents necked out his daughter from her matrimonial home which resulted her daughter and her child came to his house. So, he is not in a position to give shelter to his daughter and his grand child as he is staying in a small house. He further submits that he lives by doing coolie works and so he could not provide anything to the petitioners. Whereas the respondents have not provided any shelter or property in the name of his daughter even though it is the duty on their part.

8. To contradict the version of the petitioners, the 1st respondent as R.w.1 deposes that R2 to R5 are living separately and petitioner implicated them intentionally to harass them. He is living separately by doing coolie work and earns Rs.5,000/-per month. He further deposes that he is not having any properties on his name and petitioner is high

handed and temperament towards his family. The petitioner and himself has set separate family in Mangamur Donka and there the petitioner herself deserted him and filed a criminal case, maintenance case and this case. It is further deposed by him that there is no house or bank balance on his name. Further a criminal case filed by the petitioner against him and his family members was ended in acquittal, whereas in M.C. case this Court has passed order granting maintenance for both the petitioners at Rs.1,500/- per month. As such he has exhibited Ex.R1 and R2 on his behalf i.e., certified copy of Judgment in C.C.No.125/2014 on the file of Spl. Mobile Court, Ongole and certified copy of order in M.C.No.02/2012 on the file of this Court.

9. On careful perusal of evidence on record, there is no dispute with regard to relationship between the parties. The same is admitted by 1st respondent that 1st petitioner is his wife and 2nd petitioner is his daughter. At present, there is no amicable relationship between the parties, they are living separately in their respective houses of their parents.

10. As per P.w.1, the allegation against respondent is that the 1st respondent started harassing her by addicting to bad vices after giving birth to 2nd petitioner. The said attitude of 1st respondent was supported by other respondent and in addition to that all of them necked out her from her matrimonial home to bring money from her parents house. At that juncture she proceeded to her parents house and has been residing there since then. So, her parents are not in a position to maintain her and her child. Hence, she has constrained to file this petition praying this Court to grant maintenance of Rs.10,000/- per

month towards her food, clothing, share in the house, as well as share in lands of respondents towards her residence and also protection orders.

11. Pertaining to the aspect of maintenance, it is contended by the respondent that he is doing coolie work and earns only Rs.5,000/- p.m. Moreover he also relies upon R2 i.e., Maintenance case order in which this Court granted maintenance to the petitioner. However, while determining the quantum of maintenance, the standards of living of parties, capacity to work and earning capacity also to be taken into consideration. So, as per Ex.P.1 this court granted Rs.1,500/- each to the petitioners 1 and 2 basing on the standards of living of parties. Even though there is no rule of law that maintenance should not be granted in domestic violence case merely on the reason that maintenance was granted under Sec.125 of Cr.P.C. However, maintenance shall be granted depending the standards of living of parties. Here in this case, admittedly, respondent No.1 is a coolie worker. So, his earning depends upon his work on daily basis and on such earning capacity and standard of living of parties, this Court is not inclined to grant maintenance to the petitioners by virtue of Ex.P.2.

12. Coming to other aspects, though P.w.1 alleged several allegations against respondents that they necked her out from her matrimonial home and since then she is residing in her parental house, she did not state specifically as where she resided with her husband. Moreover she did not file any documentary proof to show that the respondent No.1 owning properties in his name. However, this court has no jurisdiction under this Act to provide share in the properties of respondents as Civil Court.

13. Coming to protection orders, no where P.w.1 stated specific allegations against respondents that they threatened her. Moreover as seen from Ex.R1, the respondents who are accused in that case, are acquitted with the result that they are not liable for punishment for the offences punishable u/s.498-A of IPC.

14. Hence, in view of the above discussion, it is observed that the veracity of petitioner does not inspire the confidence of this Court and the petitioner failed to prove her version by probable ends.

15. In the result, the petition is dismissed.

Typed to my dictation by the Personal Assistant, corrected and pronounced by me in Open Court, this the 05th day of May, 2015.

Sd/- D.Durga Kalyani
III Addl. Judl. Magistrate of I Class
Ongole.

// APPENDIX OF EVIDENCE //

-: WITNESSES EXAMINED:-

For Petitioner :

P.w.1 : Ballikurava Kiranmayi

P.w.2 : J.Devadasu,

For Respondents :

R.w.1 : Ballikurava Anjaneyulu,

DOCUMENTS MARKED ON BEHALF OF PETITIONER.

- NIL -

DOCUMENTS MARKED ON BEHALF OF RESPONDENT.

Ex.P.1 : Certified copy of Judgment in C.C.125/2014 on the file of Spl. Mobile Court, Ongole.

Ex.P.2 : Certified copy of Order in M.C.No.02/2012 on the file of III-Addl. Judl. Magistrate of I-Class, Ongole.

Sd/- D.Durga Kalyani.
III Addl. Judl. Magistrate of I Class
Ongole.