

KABG800016022022



IN THE COURT OF CIVIL JUDGE AND JMFC, KITTUR

Dated on this the 30th day of June, 2026

PRESENT: Mahammadali Nayak
B.B.A., LL.B.(Hons.)
Civil Judge & J.M.F.C., Kittur

CRL. MISC. No.389/2022

Between :

Sri. Baburao S/o Natoji Patange,
Age: 86 years, Occ: Business,
R/o Guruwarpeth Kittur,
Tq: Kittur, Dist: Belgaum.

.... PETITIONER

(By Adv.: Sri. M.S.P.)

And:

Sri. Nagaraj S/o Baburao Patange,
Age: 40 years, Occ: Textile Business,
R/o Guruwarpeth Kittur,
Tq: Kittur, Dist: Belgaum.

.... RESPONDENT

(By Adv.: Sri.R.D.B)

ORDER ON THE PETITION FILED BY THE
PETITIONER U/SEC.125 OF Cr.P.C.

The petitioner has filed this petition against the respondent praying to award maintenance amount of Rs.10,000/- per month to the petitioner from the date of petition.

2.Brief facts of the petitioner case are as follows:-

The Petitioner, an aged and physically weak person, is unable to maintain himself due to old age and age-related ailments. His wife has passed away, and his married daughters reside separately. The Respondent, who is the son of the Petitioner, is financially sound and earns more than Rs.1,00,000/- per month from his textile and money-lending businesses.

(b) Despite having sufficient means, the Respondent has neglected and refused to maintain the Petitioner or provide for his food, clothing, medical treatment, and other basic necessities. The Petitioner is presently living in a distressed condition and is unable to meet his day-to-day expenses.

(c) The Petitioner has also challenged the transfer of property bearing T.P. No. 953, Kittur, in O.S. No. 7/2021, which is pending before the competent Civil Court. The Respondent has sufficient means to maintain the Petitioner but has willfully failed to do so. Hence, the Petitioner seeks maintenance of Rs.10,000/- per month from the Respondent.

3. After service of notice, the respondent has appeared through the learned counsel and filed detailed objections.

4. The Respondent admits his relationship with the Petitioner as his son but denies the material allegations made in the petition. The Respondent contends that the Petitioner has another surviving son, namely Sadanand, who has not been impleaded as a party to the proceedings, and therefore the petition is not maintainable for non-joinder of a necessary party. The Respondent further submits that he earns only Rs.15,000/- to Rs.20,000/- per month from his textile business and has the responsibility of maintaining his family, including the educational expenses of his son and daughter. He contends that he has been regularly providing financial assistance of

Rs.3,000/- to Rs.4,000/- per month towards the Petitioner's maintenance and medical expenses and has also borne the Petitioner's medical expenses whenever required. The Respondent therefore denies neglecting the Petitioner and contends that he is not financially capable of paying maintenance of Rs.10,000/- per month as claimed by the Petitioner. Hence, the respondent prays to dismiss the petition of the petitioners.

5. In order to prove the case of the petitioner, the petitioner got himself examined as PW-1 and no documents marked and closed his side of evidence. Per contra, the respondent examined himself as RW-1 and got marked Ex.R.1.

6. Heard the learned counsel for parties. Perused the available materials on record.

7. In order to decide this petition, the following points arise for the consideration of this Court:-

POINTS

1. Whether the petitioner proves that, the respondent though having sufficient means has refused/neglected to maintain him?
2. Whether the petitioner is entitled to the relief as sought for?
3. To what order?

8. Having done so, this Court's answer to the above points are as hereunder:-

Point No.1	: In the affirmative.
Point No.2	: In the partly affirmative.
Point No.3	: As per final order for the following:

:: REASONS ::

9. **Point Nos.1 & 2:** Since these points are interconnected to each other, in order to avoid the repetition of facts, findings and evidence they are taken up together for common discussion at one stretch.

10. It is the case of the petitioner that he is the father of the respondent and was carrying on a textile business for his

livelihood. Due to his advanced age and physical infirmity, he is no longer able to continue the business. His wife has passed away, his four daughters are married and residing with their respective husbands, and one of his sons is unemployed and residing with him. The petitioner contends that the respondent is carrying on textile and money-lending businesses, has sufficient means, but has neglected and refused to maintain him despite his inability to maintain himself.

11. The respondent, while admitting the relationship, the petitioner's old age, physical weakness, inability to maintain himself, and the fact that the other son is unemployed and residing with the petitioner, denies his liability to pay the maintenance claimed. His defence is that he is the absolute owner of the property purchased from the petitioner under a registered Sale Deed dated 28.10.1997, earns about Rs.15,000/- to Rs.20,000/- per month from his business, and has to maintain his own family, including the educational expenses of his son and daughter. Hence, according to him, he is not

financially capable of paying maintenance of Rs.10,000/- per month to the petitioner.

12. The respondent has further contended that the petitioner's elder son, Mr. Sadanand, is alive and has not been impleaded as a party to the proceedings. The said contention is untenable. Non-impleadment of the other son is not fatal to the petition. In a proceeding under Section 125 of the Code of Criminal Procedure, the Court is required to determine whether the respondent, having sufficient means, has neglected or refused to maintain his father who is unable to maintain himself. The financial capacity of the other children may be a relevant factor only for determining the quantum of maintenance and does not absolve the respondent of his statutory obligation to maintain the petitioner.

13. Insofar as the first ingredient of Section 125 of the Code of Criminal Procedure is concerned, the respondent has, in his statement of objections, unequivocally admitted that the petitioner, on account of his advanced age, is no longer carrying on any business and is unable to maintain himself. Thus, the

petitioner's inability to maintain himself stands admitted and is not seriously disputed. The evidence on record further establishes that, despite having sufficient means, the respondent has neglected and refused to maintain the petitioner without any justifiable cause.

14. It is true that, during the cross-examination of PW-1, it was elicited that the respondent had borne the petitioner's medical expenses when he suffered a heart attack. However, PW-1 has further deposed that the respondent subsequently recovered the said amount after the petitioner was discharged from the hospital. Even assuming that the latter part of the testimony is not fully established, a solitary instance of extending financial assistance during a medical emergency cannot be construed as due compliance with the respondent's statutory obligation. The respondent, being the son of the petitioner, is under a legal as well as moral obligation to maintain his aged father, who is unable to maintain himself. Therefore, the first essential requirement under Section 125 of the Code stands satisfactorily proved.

15. The respondent has further contended that the petitioner's elder son, Mr.Sadanand, is equally liable to maintain the petitioner. However, this contention is devoid of merit. During the cross-examination, DW-1 has categorically admitted that Mr. Sadanand is unemployed and has no independent source of income. He has further admitted that Mr. Sadanand has been borrowing money from the petitioner, who, in turn, has been meeting such expenses out of the maintenance amount received by him. This admission clearly indicates that Mr.Sadanand is himself financially incapable of maintaining the petitioner. Therefore, the respondent cannot evade his statutory obligation to maintain his aged father by shifting the responsibility to his unemployed brother.

16. Having held that the respondent is liable to maintain the petitioner, the next question that arises for consideration is the determination of the just and reasonable quantum of maintenance. While assessing the quantum of maintenance payable to the petitioner, the Court is required to keep in view the financial capacity of the respondent, the reasonable needs of

the petitioner, the respondent's family obligations, the prevailing cost of living, and all other relevant circumstances of the case so as to award a fair, reasonable, and just amount of maintenance.

17. In the above background, the material available on record requires consideration for determining the appropriate quantum of maintenance. The petitioner has filed an Affidavit of Disclosure of Assets and Liabilities stating that, on account of his advanced age, he is not engaged in any employment and incurs monthly expenses of about Rs.10,000/- towards his food, clothing, medical treatment and other personal necessities. He has further stated that his unemployed elder son is dependent upon him. The petitioner has also alleged that the respondent is carrying on a textile business and money-lending business and is earning about Rs.10,000/- per month. However, except the affidavit of disclosure, no independent documentary evidence has been produced to establish the respondent's exact income, nor has any specific admission been elicited from RW-1 in his cross-examination regarding the same.

18. Nevertheless, RW-1 has admitted that he is carrying on a textile business, though he has stated that the income from the business varies depending upon the season. It is also not in dispute that the respondent is conducting his business in a newly constructed building at Kittur, a developing Taluk. While it may not be possible to ascertain the respondent's precise monthly income in the absence of cogent documentary evidence, the Court is not precluded from awarding a reasonable amount of maintenance. An affidavit of assets and liabilities is intended to assist the Court in assessing the financial status of the parties and determining a just and reasonable quantum of maintenance; by itself, it is not substantive evidence of the exact income or expenditure of either party. Having regard to the admitted business of the respondent, the needs of the aged petitioner, the prevailing cost of living, and the social status of the parties, this Court is of the considered view that the petitioner is entitled to reasonable maintenance from the respondent, which would adequately meet his basic needs without causing undue hardship to the respondent. Hence, in touch stones of reasons assigned above this court answer **point**

No.1 in the affirmative and point No.2 in the partly affirmative.

19. Point No.3 : In view of aforesaid discussions, I proceed to pass the following:-

::ORDER::

The petition filed by the petitioner is partly allowed with costs.

Directed the respondent to pay Rs.5,000/- per month towards monthly expenses, food, clothing and other expenses of petitioner till he dies.

Further, respondent is liable to pay Rs.1,000/- per month towards medical expenses of the petitioner until he dies.

Failing which the petitioner is at liberty to recover the arrears of the maintenance by filing separate petition in accordance with law.

The Interim order dated 15/09/2022 is confirmed.

Interlocutory applications if any pending for consideration are stands disposed off, accordingly.

Office to upload digitally signed copy of this order in CIS forthwith.

(Dictated to the Stenographer, corrected, initialed by me and then pronounced in the Open Court on this 30th day of June 2026)

(Mahammadali Nayak)
Civil Judge and JMFC,
Kittur

:: ANNEXURE ::

LIST OF WITNESSES EXAMINED FOR THE PETITIONERS:

PW-1 : Baburao S/o Natoji Patange

LIST OF DOCUMENTS MARKED FOR THE PETITIONERS :

NIL

LIST OF WITNESSES EXAMINED FOR THE RESPONDENT:

RW-1 : Nagaraj Baburao Patange

LIST OF DOCUMENTS MARKED FOR THE RESPONDENT:

Ex.R.1 : Assets and liabilities of respondent.

(Mahammadali Nayak)
Civil Judge and JMFC,
Kittur