

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&

THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

FAO.No. 167 of 2009 ()

AGAINST THE ORDER IN OP(INDIGENT) 9/2008 (I.A.NO.589/2008) of SUB
COURT, PATHANAMTHITTA DATED 28-02-2009

APPELLANT/PETITIONER-PLAINTIFF:

OMANAKUTTAN, AGED 44 YEARS,
S/O.GOPALAN ACHARI, MATHILADIYIL HOUSE, MALAYALAPUZHA
THAZAM(PO), MALAYALAPUZHA, THAZHAM MURI
MALAYALAPUZHA MURI, PATHANAMTHITTA DIST.

BY ADVS.SRI.ABRAHAM SAMSON
SMT.LOVELY SAMSON

RESPONDENT/RESPONDENT-DEFENDANT:

SUJA AGED 35 YEARS, W/O.SASI,
CHERUKUNNATHU HOUSE, KUMBAZHA (PO), KUMBAZHA MURI
PATHANAMTHITTA DIST.

R1 BY ADV. SRI.K.SHAJ
R1 BY ADV. SRI.SAJJU.S

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

F.A.O.No.167 OF 2009

Dated this the 26th day of May, 2015

JUDGMENT

Ramachandran Nair, J.

Heard the learned counsel on both sides.

2. The appellant filed a suit for realisation of an amount of Rs. 92, 07,500/- from the respondent. He sought permission before the court to sue as an indigent person as he was not having sufficient means to pay court fee.

3. The learned counsel for the appellant submitted that the court below has not considered the matter in the true spirit in which Order XXXIII Rule 1 and other provisions have been enacted. It is submitted that merely because a party is in possession of a building or that his children are studying, the application cannot be rejected. The important thing to be considered is the capacity and means to pay court fee. The appellant was examined as PW1 and he had explained various aspects before the trial court. The property in his possession is having

an extent of 7 cents and there is a shop building also in that property. The trial court in the order observed that since his three children are studying at Tamil Nadu for Engineering, he has sufficient means to pay the court fee.

4. The learned counsel for the appellant in this context relied upon the judgment of a Division Bench of this Court in **Pathumma v. K.S.E.B. (1997(2) KLT 227)** and that of the Apex Court in **Mathai M. Paikeday v. C.K.Anthony (2011 SAR (Civil) 614** . As far as the legal position is concerned, going by the decision of the Apex Court in the above quoted decision, their Lordships have held that the expression “sufficient means” in Order 33 Rule 1 of Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee. The Division Bench in **Pathumma v. K.S.E.B. (1997(2) KLT 227)** also observed as follows :

“ The question to be considered is not mere possession of property by the appellants, but sufficient

means, that is the capacity to raise money to pay court fee and it is incumbent upon the court to come to a finding on that point. The capacity to raise money is the crux of the matter and this turns on immediate convertability of the property into cash. Viewing the matter from a practical stand-point, it has to be held that an indigent person need not be bereft of all material possessions. The C.P.C. confers the benefit on person without 'sufficient means'. It refers not to a person without any means. On the other hand, the expression used is “sufficient means” which is , means sufficient to pay court fee after meeting the basic needs of life.”

5. There is no finding that he has got convertible assets to pay court fee. Here, the evidence is only to the effect that he is having 7 cents of property.

6. Even though the learned counsel for the respondent submits that the yardstick followed by the court below cannot be said to be

faulty, we cannot agree. It has not been proved that he has got sufficient means to pay court fee and also capacity to offer property for meeting the liability towards court fee. We therefore allow O.P. (Indigent) No.9/2008 (I.A.No.589/2008) and exempt the appellant from paying court fee and consequently permission to sue as an indigent person is hereby granted. We direct to dispose of the main matter expeditiously.

T.R.RAMACHANDRAN NAIR, JUDGE

K.P.JYOTHINDRANATH,JUDGE

SV.