

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

FAO.No. 4 of 2015 ()

I.A.No.844 of 2014 in O.S.No.190 of 2012 OF THE SUB COURT, THIRUVALLA
DATED 10.12.2014

APPELLANT/PETITIONER/DEFENDANT:

ABRAHAM JACOB
S/O.P.A.JACOB, PATHIRUVELIL VEEDU, VALLAMKULAM P.O.
ERAVIPEROOR VILLAGE, THIRUVALLA TALUK.

BY ADVS.SRI.P.HARIDAS
SMT.S.SIKKY

RESPONDENTS/RESPONDENTS/PLAINTIFFS:

1. THAMPI CHACKO
KODUMATHARA VEEDU, THATTACKADU MURI, KOIPURAM VILLAGE
THIRUVALLA TALUK - 689 101.

2. BOBY JACOB,
KODUMATHARA VEEDU, THATTACKADU MURI, KOIPURAM VILLAGE
THIRUVALLA TALUK - 689 101

R1 & 2 BY ADV. SRI.JACOB P.ALEX
R1 & 2 BY ADV. SRI.JOSEPH P.ALEX

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &
SUNIL THOMAS, JJ.**

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F.A.O.No.4 of 2015

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Dated this the 21st day of July, 2015

JUDGMENT

Sunil Thomas, J.

This appeal is against the order in I.A.No.844 of 2014 in O.S.No.190 of 2012 of the Sub Court, Thiruvalla, by which the leave sought to prefer a counter claim as an indigent person was rejected.

2. The suit was one seeking a decree of mandatory injunction, directing the defendant to dismantle the structures in the property. The defendant appeared and resisted the suit. He raised a counter claim for Rs.10,00,000/-. The court fee payable thereon was Rs.98,400/-. Claiming that he did not have the sufficient means to pay the court fee, I.A was filed. No objection was filed to the application. The State also did not file any report. The defendant was examined as PW1 and Exts.B1(a) to g were marked. Court below, on an evaluation of the available materials held that the petitioner had sufficient means to pay the court fee and rejected the petition. This is challenged in this appeal.

3. Heard both sides and examined the records.

4. The evidence tendered by PW1 indicates that he had 24 cents of land though, there was no income from the property. In the course of the cross examination, it was revealed that he was running a workshop and about 3 to 4 vehicles could be repaired simultaneously in his workshop. He admitted that he was engaging 7 employees who were paid the salary ranging from Rs.6,000/- to Rs.8,000/-. He admitted that he had overdraft facility from a bank to the limit of Rs.15,00,000/-. He further admitted that he was owning a Maruti car. He was confronted with certain photographs of the workshop run by him.

5. On the basis of the above materials, the Court held that the above facts cumulatively indicated that he has sufficient means to pay the court fee and consequently, his plea for indigency was not accepted.

6. Even though he had 25 cents of land, evidently there was no income derived from the property. Respondent also did not file any objection. The Government also did not file any statement showing that he had sufficient income. Evidence shows that he was running a workshop engaging 7 persons each of whom was paid @Rs.6,000/- to Rs.8,000/-. Normally, it could be presumed that he may be having some income especially when he is running a

concern engaging 7 persons. However, he is also under an obligation to pay them salary ranging from Rs.6,000/- to 8,000/- per person. The above does not show his income, but only his liability. Further, the fact that he has an overdraft facility of Rs.15,00,000/- also does not indicate that it was his means. The Court should have found that it was a liability on him.

7. It is also pertinent to note that most significant documents that could have thrown light regarding his actual income from the workshop were the account books, IT returns and documents in relation to the running of the business if at all they were maintained. No attempt was made to confront PW1 or challenge him in this regard. Hence, merely on the basis of facts as narrated above, it could not be concluded that he had the sufficient means to pay the court fee. It is settled that a person to claim indigency, should not be one without any means. It only provides that after meeting the expenses for his daily essential requirements and the sustenance of his family, he must be able to save the required sum payable as court fee. The available materials do not indicate as such that he has got that much capacity. Hence, the finding of the court below does not appear to be sustainable. The legal provision has to be liberally interpreted to enable genuine

parties to seek the benefit under Order XXXIII. In the light of the above, We feel that petitioner had succeeded in proving that he is entitled to sue as an indigent person. The finding of the court below is not legally sustainable and is liable to be set aside.

In the result, the appeal is allowed, impugned order is set aside and I.A.No.844 of 2014 in O.S.No.190 of 2012 is allowed. Petitioner is permitted to raise counter claim as an indigent person. However, considering the fact that the matter is pending for quite some time, the Court shall try to expedite the trial, untrammelled by any observations made herein above.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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