

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 25TH DAY OF MAY 2015/4TH JYAISHTA, 1937

FAO.No. 171 of 2011 ()

AGAINST THE ORDER/JUDGMENT IN POP 23/2009 of I ADDL.SUB COURT,
THRISSUR DATED 01-11-2010

APPELLANT/PETITIONER:

MARIYA JOSEPH,
W/O LATE THORUVELIL JOSEPH, PEECHI DESOM & VILLAGE
THRISSUR TALUK.

BY ADVS.SMT.K.S.HASEENA

RESPONDENT(S)/RESPONDENTS:

1. GOVERNMENT OF KERALA, REP. BY THE
DISTRICT COLLECTOR, THRISSUR-680003.

2. DEPUTY TAHSILDAR(R.R) ,
THRISSUR-680003.

3. VILLAGE OFFICER,
PEECHI VILLAGE OFFICE, PEECHI, THRISSUR-680653.

R1-3 BY ADV. GOVERNMENT PLEADER: SRI E.M.ABDUL KHADIR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
25-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No.171 OF 2011

Dated this the 25th day of May, 2015

JUDGMENT

Thottathil B.Radhakrishnan,J.

Heard.

2. This appeal is against an order by which the court below refused to grant leave to the appellant to sue as an indigent. The appellant claims that she is a legatee in terms of the Will executed by late T.J.John, who is the father-in-law of the appellant. Late John was a PWD contractor. According to the plaintiff, while she held the property as legatee, she received the revenue recovery notice referable to late John for an amount of Rs.19,77,813/-. Since those revenue recovery proceedings will affect the property bequeathed to the appellant, she proposed to file a suit seeking an order of prohibitory injunction against enforcement of the revenue recovery proceedings. She sought leave to sue as an indigent on the plea that she does not have the means to pay the court fee payable on such suit, i.e., Rs.97,331/-.

3. The court below has taken the view that the appellant cannot be permitted to sue as an indigent having regard to the fact

that the suit is not maintainable. We are of the view that this approach of the court below is fault because, maintainability of the suit for injunction, seeking declaration in relation to revenue recovery proceedings, may be a matter for decision if such an issue is raised. We say this, more importantly because, the court fee determined in the plaint is Rs.97,331/-. Thereby, even according to the plaintiff, what is said to be instituted is not merely a suit for injunction simplicitor.

4. The revenue recovery proceedings could be had only against the assets of late John. If, as legatee, the appellant sues, she cannot be pushed to pay the entire court fee out of the resources to be generated otherwise.

5. Having regard to the materials considered by the court below, we are of the view that the respondents have also the liberty to seek for recovery of the court fee on termination of the suit, of course, subject to the directions of the trial court.

6. For the aforesaid reasons, we are satisfied that the impugned order deserves to be set aside and consequently the P.O.P. seeking leave to sue as indigent, deserves to be allowed.

7. The appeal is allowed vacating the impugned order and allowing the P.O.P. No.23/2009 of the Sub Court, Thrissur. The parties are directed to mark appearance before the court below on

28th July, 2015.

The appeal is allowed as above.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge
Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.