

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

FAO.No. 220 of 2011 ( )  
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(AGAINST THE ORDER/JUDGMENT IN OP(INDIGENT) 4/2010 of PRL.SUB  
COURT,KOTTAYAM DATED 16-07-2011)

APPELLANT(S)/PETITIONERS/PLAINTIFFS:  
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1. P.C.DEEPA, D/O. CHELLAPPAN,  
PLAMPARAMPIL HOUSE (177/16), CHANGANACHERRY, VILLAGE,  
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT.

2. P.C. DEEPTI, D/O. CHELLAPPAN,  
PLAMPARAMPIL HOUSE (177/16), CHANGANACHERRY, VILLAGE,  
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT  
FROM NANDANA HOUSE, PERUNNA EAST KARA  
CHANGANACHERRY VILLAGE, CHANGANACHERRY TALUK

BY ADVS.SMT.A.SREEKALA  
SMT.C.R.DIYA

RESPONDENT(S)/RESPONDENTS/DEFENDANTS:  
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1. CHELLAPPAN, S/O. NARAYANAN,  
NANDANA(VADASSERIL) HOUSE, PERUNNA EAST KARA  
CHANGANACHERRY VILLAGE, CHANGANACHERRY TALUK.  
PIN-686101.

2. OMANA CHELLAPPAN, W/O. CHELLAPPAN,  
PLAMPARAMPIL HOUSE(177/16), CHANGANACHERRY VILLAGE  
CHANGANACHERRY TALUK, KOTTAYAM DISTRICT FROM  
NANDANA HOUSE, PERUNNA EAST KARA, CHANGANACHERRY  
VILLAGE, CHANGANACHERRY TALUK-686101.

R,R1 BY ADV. SRI.K.R.KURUP  
R,R1 BY ADV. SRI.C.R.SYAMKUMAR  
R,R1 BY ADV. SRI.K.J.ABRAHAM  
R,R1 BY ADV. SRI.LAVARAJ M.G.  
R,R1 BY ADV. SRI.C.R.VINOD KUMAR  
R,R1 BY ADV. SRIM.P.JIYESH

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON  
15-06-2015, THE COURT ON 19/6/2015 DELIVERED THE FOLLOWING:

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

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**F.A.O. No. 220 OF 2011**  
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Dated this the 19<sup>th</sup> day of June, 2015

**JUDGMENT**

**Sunil Thomas, J.**

The plaintiffs in a suit for cancellation of a sale deed and other ancillary reliefs, aggrieved by the rejection of their application to sue as indigent persons have preferred this appeal.

2. The suit was laid by the plaintiffs who are sisters and also the children of the defendants, contending that sale deed No. 162/2009 of SRO, Changanacherry was got obtained from them by the first defendant father by exerting fraud, threat and coercion. Along with the suit, they filed an application OP (Indigent) No.4/2010 seeking permission of the court to permit them to sue as indigent persons since they claimed to have no sufficient means to pay the court fee of Rs. 1,07,800/-

3. Evidence was let in by both sides to substantiate their rival contentions. The second petitioner was examined as PW1 and the first respondent also adduced evidence. He

also got examined the Assistant Manager of a mobile phone service provider. His defence was that the petitioners were residing in big house, were using mobile phones, and had withdrawn Rs.57 Lakhs from the account, which cumulatively indicated that they were in affluent circumstances.

4. The court below, on an evaluation of all the available materials, rejected the application holding that the petitioners had sufficient means to pay the court fee. This is under challenge in this appeal.

5. Heard. Examined the records.

6. The contesting respondent had a case that, the first petitioner was working in a Chartered Accountant's firm. This is not seen denied. The second petitioner in her evidence admitted that she is a graduate with B.Ed. degree and was earlier working as a lecturer, but at present, jobless. It has also come out in evidence that the petitioners were residing in a rented building paying rent of Rs. 2,000/-. It has also come out in evidence that the petitioners had mobile connections and the monthly rent of one of the petitioner was about Rs.1530.44/- as per the bill.

7. Ext.B1 indicated that the second respondent, the mother, who was staying with the plaintiffs had withdrawn huge amounts from the bank account. Ext.B3 proved that a sum of Rs.57 Lakhs was withdrawn. According to the first respondent, this was withdrawn by the petitioners in collusion with the second respondent from the bank account of the first respondent, utilizing his blank signed cheques. On the other hand, this was denied by the petitioners. It has also come out in evidence that the three children of the first petitioner were studying in CBSE schools.

8. An evaluation of the above facts evidently leads to a conclusion that both the petitioners were leading a reasonably affluent life. Though the exact income of each of the petitioners and as to whether they have got sufficient income to pay the court fee are not brought on record. However, it is evident that the petitioners cannot lead such an affluent life, with the disclosed income. Evidence by itself indicate not only that they were in affluent situation, but they have suppressed the details regarding their income and attempted to prove that they were without any means. The petitioners even did not disclose that

they were using the mobile phones. The court below had held that in the background that about Rs.1,500/- was being spent for the mobile phone alone, the usage of mobile phone cannot be seen as an absolute necessity. The totality of the material is that, it casts serious doubt on the case set up by the petitioners. Consequently, the court below was justified in concluding that there are indications to the effect that the petitioners had sufficient means to pay the court fee.

In the light of the above , the findings of the court below do not call for any interference. It is liable to be confirmed and the appeal stands dismissed accordingly. No costs.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN**  
**Judge**

Sd/-

**SUNIL THOMAS**  
**Judge**

dpk

**/true copy/ PS to Judge.**

