

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 6TH DAY OF APRIL 2015/16TH CHAITHRA, 1937

OP(C).No. 576 of 2015 (O)

AGAINST THE ORDER DTD. 19.12.14 IN POP 19/2007 of I ADDL.SUB COURT,
THRISSUR

PETITIONER/IST RESPONDENT:

SHINY,
D/O.LATE AYYAPPAN, POOKKUTH VEEDU, MANNARKADU VILLAGE
MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

RESPONDENTS/PETITIONER/RESPONDENTS 3 & 4:

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1. REVI
S/O.NADUVILEDATH RAMAN, THEKKUMKARA VILLAGE
KUNDUKADU DESOM, THALAPPILLY TALUK.
 2. SHAJU
S/O.LATE AYYAPPAN, POOKKUTH VEEDU, MANNARKKADU VILLAGE,
MANNARKKAD TALUK, PALAKKAD DISTRICT.
 3. BUNUDAS
S/O.LATE AYYAPPAN, POOKKUTH HOUSE, DOOR NO.15/1236
VADAVALLY, SATANAPPALLY P O, ANDHRA PRADESH,
PIN-522403.

BY ADV.SRI. BABU CHERUKARA.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
06-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 576 of 2015 (O)

APPENDIX

PETITIONERS' EXHIBITS :

P1:-TRUE COPY OF P O P NO 19/2007 FILED BY IST RESPONDENT.

P2:-TRUE COPY OF ORDER DTD 9/7/2013 IN P O P NO 19/2007.

P3:-TRUE COPY OF JUDGMENT DTD 148/2014 IN FAO NO 246/2013.

P4:-TRUE COPY OF OBJECTION FILED BY PETITIONER.

P5:-TRUE COPY OF IA NO.5258/2014 IN P O P NO 19/2007 FILED BY IST
RESPONDENT.

P6:-TRUE COPY OF OBJECTION FILED BY PETITIONER.

P7:-TRUE COPY OF ADDITIONAL OBJECTION FILED BY PETITIONER.

P8:-TRUE COPY OF THE ORDER DTD.19/12/2014 IN P O P NO.19/2007 OF
THE FIRST ADDITIONAL SUB COURT, THRISSUR

RESPONDENTS' EXHIBITS: NIL.

// True Copy //

P.A. To Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.576 OF 2015

Dated this the 6th day of April, 2015.

J U D G M E N T

Aggrieved by the order dated 19.12.2014 in P.O.P.No.19/2007 of 1st Additional Sub Court, Thrissur whereby the court below accepted the plea raised by the plaintiff that he is incapable of paying requisite court fee and permitted him to sue as an indigent person, the petitioner has come up with this original petition under Article 227 of the Constitution of India.

2. Close acquaintance between the petitioner and the respondents later became bitter. According to the petitioner, at the time when things were going well, 5.60 Acres of land was purchased in their joint name. They resided together there for a period of six months. It was claimed by the petitioner before the court below that entire money for the purchase of property was funded by him. He was persuaded to execute a power of attorney in favour of the 1st respondent who misusing the same has transferred the property in favour of the 2nd respondent.

Various other things are stated in the petition. They are not relevant for the purpose of disposal of the matter.

3. Suffice to say that, the petitioner before the court below seeks declaration and cancellation of document by which his share in the property was alienated. Along with the suit, the petitioner filed an indigent application stating that he is not able to pay court fee and he may be allowed to sue as an indigent person. Initially the petition was dismissed by the trial court. That was carried in F.A.O as F.A.O.No.246/2013 before this Court and this court set aside the order of the trial court and directed the lower court to pass fresh orders in the light of the observations made in the order. Thereafter the respondents filed counter affidavit and further evidence was adduced.

4. The evidence consists of the testimony of PW1 and documents marked as Exts.A1 to A8 on the side of the petitioner. The respondents had RWs 1 and 2 examined and Exts.B1 to B31 marked. Exts.X1 and X2 are marked as court exhibits.

5. On consideration of the materials before it, court below came to the conclusion that the claim made by the petitioner that

he is an indigent person could not be disproved by the respondents even though both were allowed to adduce evidence and allowed the petition holding that the petitioner is incapable of paying requisite court fee.

6. Challenging the said order, learned counsel appearing for the petitioner who is the 1st respondent before the court below pointed out that the court below has erred both on facts and in law in allowing the petitioner therein to sue as an indigent person. It is clear from the records and evidence that he was involved in several criminal cases and his son was very affluent and it is not as if he is incapable of paying the requisite court fee. It is also pointed out that a publication named 'Rachana Publications' is still being run by the petitioner before the court below as would be clear from one of the books produced by the petitioner herein in which the mobile number of the 1st respondent is shown as contact number. Several other contentions were also taken by the petitioner to show that the 1st respondent was capable of paying court fee.

7. Learned counsel appearing for the petitioner before this

Court relied on the decision in **Biju Paul** vs. **Mercy** (2014 (3) KLT 324) and contended that the petitioner before the court below was staying with his son who was very affluent and going by the dictum laid down in the above case, if the person with whom the indigent person stays has financial ability and affluence, that is sufficient to reject the claim of the person who prays for sue as an indigent person. It is also pointed out that the petitioner before the court below has engaged a very Senior Counsel in the court for conducting his case and that itself shows that he is capable of paying court fee.

8. Learned counsel appearing for the 1st respondent before this Court, who is the petitioner before the court below, resisted the petition and pointed out that there is absolutely no evidence to show that 1st respondent earns any amount so as to warrant a conclusion that he is capable of paying court fee. The petitioner had categorically averred that 'Rachana Publications' was sold in 2005 and even according to the evidence adduced by the 1st respondent before the court below, she has no case that licence stands in the name of the petitioner before the court

below. Her case is that licence was in the name of some other person and the business was being run by the petitioner. This claim made by the petitioner herein is not proved. On an earlier occasion, the matter was remanded because the petitioner before the court below did not produce the statement of two of his bank accounts and later that were produced and that showed that one of the accounts was already closed and in the other account, only a meager amount of Rs.100/- was available. It was under those circumstances that the court below had come to the conclusion that the 1st respondent herein is incapable of paying court fee. The order suffers from no infirmity.

9. It is often said that court fee is a matter between State and the petitioner and the defendant had no role to pay. Learned counsel appearing for the petitioner before this Court relied on the decision in **Shri M.L.Sethi vs. Shri R.P. Kapur** (1972 KHC 540) wherein the Apex Court had occasion to consider the scope and ambit of Order 33 Rule 6 of the Code of Civil Procedure and held that it is not proper to hold that question of payment of court fee is purely a matter between the State and the petitioner

concerned as Order 33 Rule 6 CPC would show otherwise. According to the Apex Court, that provision shows that the defendant is entitled to adduce evidence to show that the claimant is not an indigent person. That provision has to be understood in the context of that case and the challenge was against the order of High Court of Allahabad.

10. However, there is an amendment by the Kerala State to Order 33 Rule 6 CPC which is not in consonance with the provision construed by Apex court. However that issue need not detain the court. Even assuming that the 1st respondent had right to show that the petitioner before the court below was not an indigent person, the question is whether she has succeeded in doing so. Even though the 1st respondent claimed that the petitioner before the court below is capable of paying court fee, she was not able to produce any records showing his financial status.

11. The main argument was that though the petitioner before the court below claimed to have sold 'Rachana Publications' in 2005, in one of the books, mobile number of the

petitioner before the court below is shown as contact number. This is highlighted as a fact which would go to show, according to the 1st respondent before the court below, that affairs of 'Rachana Publication' was still being run by the petitioner and his son and the claim that they had no role to play in the publication cannot be accepted.

12. Even though there may be some substance in the above contention, there was no attempt from the side of the 1st respondent before the court below to have any document produced to show that the petitioner before the court below and his son had any interest in the publication. Merely because the mobile number of the petitioner before the court below appears in one of the books published, one cannot come to the conclusion that the whole business is run by the petitioner before the court below and his son.

13. The court below was therefore justified in not accepting the above argument against the petitioner. Reliance placed on the decision in ***Biju Paul*** vs. ***Mercy*** (2014 (3) KLT 324) has to be understood in the facts and circumstances of the case. That

was a case where the wife wanted to sue as an indigent person and it was revealed that her husband is financially sound and she is a dependent on him. It was also revealed that her husband had sold a property two years ago and received a huge amount as consideration. It was in that context it was held that since she is dependent on her husband who is financially sound, there is a presumption that she is capable of paying court fee. How far, even assuming that such a presumption could be drawn, could be applied to the case on hand is a different question. Admittedly, there is no marriage between the petitioner and the 1st respondent. There is also nothing to show as of now that the son with whom the petitioner before the court below is residing is an affluent person even though there is a contention by the 1st respondent that the affairs of the petitioner are being looked after by him and the activities are funded by him.

14. Two bank accounts produced by the petitioner before the court below which weighed with the court below on earlier occasion and produced at a later stage showed that there was no substantial amount in the said accounts. One of the account has

been closed and in the other account a meager amount of Rs.100/- is available. There was no attempt from the side of the 1st respondent before the court below to show that the petitioner had any source of income of his own.

15. Under these circumstances, the court below was justified in coming to the conclusion that the petitioner before the court below has succeeded in showing that he is incapable of paying court fee.

One fact needs to be noticed at this point of time. The fact that the petitioner before the court below has been allowed to sue as an indigent person does not mean that he can continue as such throughout the period of the suit. At any point of time, the defendant or the State can show that he is not entitled to continue as such and that point of time, the court can be called upon to consider the issue afresh.

With the above observation, this original petition is dismissed.

Sd/-

**P.BHAVADASAN
JUDGE**

smp