

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2015

C O R A M

THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

C.M.A.No.1669 of 2015

Jayapal

...Appellant /Petitioner

Vs.

1. Periya Pandi @ Palthan Pandi
2. A/m.Kayarohana Swami Thirukovil,
rep. its Executive Officer,
Nagapattinam. ... Respondents/Respondent

PRAYER: Civil Miscellaneous Appeal filed against the judgment and decree, dated 07.01.2015, passed in Pauper Original Petition No.53 of 2013, on the file of the District Court, Nagapattinam.

For Appellant : Mr.K.Selvaraj

JUDGEMENT

This Civil Miscellaneous Appeal is filed by the proposed plaintiff against the order of the Trial Court, whereby, he has not been declared as an *informa pauperis*.

2. The appellant has come forward with this Pauper Original Petition No.53 of 2013, by stating that, he is an indigent person, owning no movable or immovable properties, except 'C' schedule property, worth Rs.250, and hence, he is unable to pay the Court fee to the tune of Rs.2,67,225/-. The petitioner also, in support of his case, examined himself as P.W.1. The said Petition was seriously contested by the second respondent/Temple. The Trial Court, after due contest, dismissed the Petition by the impugned order. Hence, this Civil Miscellaneous Appeal is filed by the petitioner/proposed plaintiff before this Court.

3. Though the learned counsel appearing for the appellant would question the correctness of the impugned order on the grounds that the Trial Court erred in imposing the onus on the appellant to produce certificates from the Village Administrative Officer, or Tahsildar, to prove that he is an indigent person, and such course adopted by the Trial Court is erroneous and against law, this Court, on a reading of the entire impugned order, is not inclined to accept the contentions raised herein. The Trial Court has dismissed the Petition mainly on the basis of the evidence of P.W.1 given in the

course of cross-examination, which is to the effect that the petitioner is owning 1,05,300 sq.ft. of land, adjoining the suit property, and he is also owning a house property in Tiruvarur, and the vacant site, measuring 1,05,300 sq.ft., is already let out to three persons for specified lease amount mentioned in the lease deed, and his son is studying in the Engineering College, and the College fee is Rs.1,00,000/- per year, etc., Whereas, the factum of owning the immovable properties, and receipt of rental amount from the lessees of the property owned by the petitioner after the filing of the Petition, and the source of income to educate his son by paying Rs.1,00,000/- as College fee per year and other expenses are not admitted in the Pauper Petition, on the other hand, the petitioner has come forward with totally false case, as if, he is not owning any property, except 'C' schedule. The failure to mention about the properties owned, amounts to vital suppression of the material facts. Such suppression coupled with his conduct in placing false case shows that he has come to the Court with unclean hands and the same will dis-entitle the petitioner to claim any relief in the Indigent Petition and the Petition is rightly dismissed by the Trial Court. Thus, this Court finds no error, or infirmity, in the order passed by the Trial Court and no reason to entertain this Appeal.

The Civil Miscellaneous Appeal is, hence, dismissed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

sd`

To
The District Judge, Nagapattinam.

+1 cc to Mr.K.Selvaraj, Advocate, sr.40644

tej co
kra 15/09

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