

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2015

CORAM

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

C.M.A.No.2272 of 2009

1.George Philips
2.Elizabeth George

... Appellants

vs.

1.M/s.Shajbas Constructions,
rep. by its Managing Director
A.M.Mohammed Ibrahim

2.The District Collector,
Nilgiris District at
Ootacamund.

... Respondents

Civil Miscellaneous Appeal has been filed under Section 104 r/w order 43 rule (1) (n-a) of the fair and final order dated 4.11.2004 passed in O.P.No.3 of 2004 on the file of the learned District Judge of Nilgiris at Ootacamund.

For Appellants : Mr.S.K.Rakhunathan

For Respondents : Mr.M.B.Sethuraman,
for R.1

JUDGMENT

The prospective plaintiffs are the appellants herein. The civil miscellaneous appeal is filed against the order rejecting the prayer to declare the plaintiffs as indigent persons.

2. I have heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and perused the entire materials available on record.

3. For the sake of convenience, the parties will be referred to as per their ranking in the trial Court.

4. The prospective plaintiffs have come forward with the suit for recovery of Rs.52,00,000/- charged on the plaint schedule property and other amount with interest. The total Court Fee payable as per the valuation given in the plaint is Rs.3,91,000/-. The plaintiffs come forward with O.P.No.3 of 2004 seeking permission to file the suit as in forma pauperis. It is averred in the affidavit

filed in support of the petition that both the plaintiffs are not possessed of sufficient means to pay the Court Fee and they got no immovable property or cash except a watch, two pants and shirts and they are without any capacity to raise sufficient money to pay the Court Fees and they have no title or possession of any property and the same is seriously opposed in the counter filed by the second respondent District Collector in the year 2003. The second respondent, in para 3 of his counter, furnished the particulars of the properties owned by both the plaintiffs 1 and 2 independently and jointly. Thereafter, in the course of enquiry, the first plaintiff for himself and on behalf of the second plaintiff filed first proof affidavit dated 9.7.2004 wherein they have come forward with a new case as if they are heavily indebted and the liabilities are over Rs.10,00,00,000/-. The first proof affidavit is also silent about the ownership of the plaintiffs 1 and 2 over the properties mentioned in para 3 of the counter filed by the second respondent District Collector. The first plaintiff would thereafter come forward with an additional proof affidavit along with xerox copies of six documents viz.,

(i) Communication from the State Bank of India regarding the outstanding;

(ii) Notice issued by the Recovery Officer for payment of Rs.44,47,356/-;

(iii) Order passed by the Debt Recovery Tribunal for payment of Rs.30,00,000/- to Indian Overseas Bank;

(iv) Sales certificate pertaining to sale of his house in Court auction for realisation of the decree amount due to the Bank of India, Travancore;

(v) Notice of sale of immovable property issued by the Tahsildar, Kochi for recovery of Government dues;

(vi) Sale proclamation made in E.P.R.No.266/1990 in O.S.No.188 of 1993 for sale of his property.

Even in the additional affidavit, the plaintiffs have not come forward with a clear denial about their ownership of different properties independently and jointly. The trial Court taking note of such conduct of the plaintiffs in suppressing material facts and in coming forward with false case as if they are not possessed of any properties, was inclined to reject the petition to declare them as in-forma pauperis. This Court finds no error or infirmity in the order so passed by the trial Court, as such the plaintiffs are disentitled to any relief in this civil miscellaneous appeal.

5. In the result, the civil miscellaneous appeal is dismissed. No costs. Time for payment of Court Fee is three months.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

sbi

To

1.The District Judge of Nilgiris
at Ootacamund.

2.The Record Keeper,
V.R. Section,
High Court, Madras.

+1cc to Mr.M.B.Sethuraman,Advocate(sr.43944)
+1 cc to Mr.S.K.Rakhunathan,Advocate(sr.43636)

km(co)
cp 23/09/2015

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