

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2015

CORAM

THE HON'BLE Ms. JUSTICE K.B.K.VASUKI

CRP (PD) No.847 of 2006

and M.P.No.1 of 2006

1.Krishnammal
2.Alamelu
3.Murugan
4.Balaji
5.Sampoornam @ Pappu
6.Meena
7.Baby @ Annapoorani
8.Arul Lakshmi
9.Minor Hari Kumar @ Sathis
rep. by his father and
natural guardian 4th petitioner Petitioners

vs.

1.Senthil
2.Andal
3.Ganagavalli
4.Vijayalakshmi
5.Rani Respondents

Civil Revision Petition is filed against the order dated 2.1.2006 made in P.O.P.No.19 of 2005 on the file of the Additional District Judge (Fast Track Court No.2), Salem.

For Petitioners : Mr.P.Mathiyanan
For Respondents : Mr.P.Jagadeesan

O R D E R

The respondents 1 to 3, 5, 6 and 8 to 11 in Pauper O.P.19/2005 are the petitioners herein.

2.For the sake of convenience, the parties are, as per their rank in pauper OP, referred to in this Civil Revision Petition.

3.The respondents 1 to 4 herein have come forward with the suit for partition along with Pauper OP for permitting the petitioners to sue as indigent persons by contending that they have no sufficient means to pay court fee of Rs.4,250.50paise for main relief and

Rs.1,80,600.50paise for alternative relief. The plaintiffs have in their pauper OP contended that they do not own any property except a small residential house, which is not income yielding property and other movable properties worth about Rs.300/- as mentioned in A schedule and have no funds to pay court fee on the plaint etc.

4.The petition was seriously opposed by the respondents by stating in their counter that the second petitioner along with one Sivan deposited a sum of Rs.17,000/- in Subramania Nagar Co-operative Urban Bank Ltd on 21.4.1998 and the amount was matured in the year 2003 for Rs.35,010/- and the amount is still in the bank deposit and is readily available. It is further stated in the counter that the petitioners 3 and 4 have been earning each Rs.5,000/-p.m. The respondents have also questioned the maintainability of the pauper OP on the ground that the petitioners could have approached District Legal Services Authority for engaging an Advocate. The second petitioner Andal as PW1 in the witness box admitted the availability of deposit in the bank to the tune of Rs.35,010/-. However, the trial court, having found that the bank deposit amount is not sufficient enough to pay the court fee and having accepted the plaintiffs' plea that they have no other means to arrange for payment of balance court fee, was inclined to order the pauper petition as prayed for. Hence, this Civil Revision Petition by the contesting respondents before this court.

5.The learned counsel for the petitioners herein by relying on the following decisions of this Court has contended that non disclosure of full particulars of assets would entail the petition to be dismissed:

- (i)2011 (6) CTC 347 (SC) (Mathai M.Paikeday v. C.K.Antony)
- (ii)1945-1-MLJ 53 (DB) Chellammal v. Muthulakshmi Ammal
- (iii)2012 (3) CTC 507 (DB) (Mohana and another v. Nirmaladevi and others)
- (iv)1988-1-LW. 429 (P.V.Chandrasekharan and others v. Thirumalai Chit Funds by Partner K.L.Balakrishnan and others)
- (v)1991-1-LW 279 (S.Natarajan and others v. Bala and another)
- (vi)1998-2-LW. 789 (A.Pauliah v. T.Gnanasigamani)
- (vii)1988-3-LW. 645 (R.Ganga v. S.Royal) and
- (viii)2010 (6) CTC 150 (Dr.Mohana Balusamy v. N.Gomathi and another).

6.Whereas, the learned counsel for the respondents by relying on the following authorities of the Hon'ble Supreme Court, our High court and other High court would attempt to defend the correctness of the order impugned herein. It is contended by them that mere omission to furnish the particulars is not fatal, but only omissions indicative of lack of bona fides or good faith on the part of the applicants that would indeed be fatal and the party lacking in good faith is not entitled to discretionary relief under order 33 Rule 1 CPC. The authorities cited are:

(i)AIR 1961 SC 1299 (Sri Rathnavarmaraja v. Vimla)
(ii)AIR 1953 Travancore -Cochin 614 (Chinnaswami Goundan v. Anthonyswamy)
(iii)1955 MLJ 638 (Madras High court) (Murugan v. Sivaraman and others)
(iv)AIR 1978 Karnataka 117 (V.Krishna Bhat v. Ravishankar and others)
(v)AIR 1985 Orissa 195 (Jeypore Evengelical Lutheran Church v. Dr.Samuel Santhi Kumar Chaudhury and another)
(vi)AIR 1989 Patna 179 (Radhe Shyam Prasad v. Mostt. Shiv Dulari Devi) and
(vii)AIR 1989 Allahabad 239 (Tulsi Das and others v. Madan Lal and others).

7.Heard the rival submissions made on both sides and perused the materials placed before this court.

8.It is true that the Division Bench and learned single judge of our High Court in the judgments cited on the side of the petitioners, are of the view that the suppression of full particulars of assets owned by the petitioners is sufficient to reject the application for leave to file the suit in forma pauperis. Whereas, in the judgments cited on the side of the respondents, the Hon'ble Supreme Court and learned single judge of our High Court and other High Court have categorically observed that when such omission is not intentional and mala fide and even if the asset omitted is taken into account, the petitioner will be a pauper within the meaning of the explanation in Order 33 Rule 1 namely, 'one not possessed of sufficient means to enable him to pay the required court fee', such omission need not be considered fatal.

9.In my considered view, the observation of the Apex Court, our High court and various High courts in the judgments cited on the side of the respondents are squarely applicable to the facts of the present case. In the present case, the court fee payable is Rs.4,250.50paise for main relief and Rs.1,80,600.50paise for alternative relief and the amount available in the bank deposit is Rs.35,010/-. In that event, the omitted item is small and insignificant compared with the quantum of court fee payable and it cannot also be said that the omission was deliberate and mala fide for the obvious reason that even if he had mentioned it, the petitioner could still have easily maintained that he was not in a position to pay the required court fee and therefore, the petitioner is entitled to sue as a pauper.

10.The Hon'ble Apex Court in the judgment 2011 (6) CTC 347 (Mathai M. Paikeday v. C.K.Antony) (above cited) has explained as to who can be recognised as indigent person, which reads as follows:

"To sum up, the indigent person, in terms of Explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realisable unencumbered assets, and person's total indebtedness and financial assistance received from the family members or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. Therefore, the expression "sufficient means" in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee".

11. The Division Bench of this Court has in the decision reported in 2012 (3) CTC 507 (DB) (Mohana and another v. Nirmaladevi and others) observed that "the possession of sufficient means refers to the possession of sufficient realisable property, which will enable the plaintiff/appellant to pay court fee on the plaint. The expression "possession of sufficient means" refers to capacity to raise money and not the actual possession of the property".

12. Thus, the appreciation of the explanation for indigent person rendered by the Hon'ble Apex Court and the Division Bench of our High court would only favour the findings of the trial court that the petitioners in Pauper OP are not in possession of sufficient realisable property and have no capacity to pay the required court fee. Even if the omitted item is taken into consideration, still they can be considered as pauper. Further, the omission to mention about the bank deposit is also not shown to be tainted with any mala fide intention.

13. As a matter of fact, the Apex court in the judgment reported in AIR 1961 SC 1299 (Sri Rathnavarmaraja v. Vimla) (cited supra) while dealing with the right of the defendants in opposing Pauper OP has gone to the extent of saying whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State and the defendant who may believe and even honestly, that proper court fee has not been paid by the plaintiff, has still no right to

move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. That being the legal position, this Court finds no reason to interfere with the order impugned herein and the petitioners are hence dis-entitled to get any relief in this petition.

14.In the result, this Civil Revision Petition is dismissed, with direction issued to the trial court to dispose of the suit as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Additional District Judge (Fast Track Court No.2), Salem.

+1 cc to Mr.P.Jagadeesan Advocate sr.23665

+1 cc to Mr.P.Mathivanan Advocate sr.24304

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