

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 6715 of 2015(O&M)
Date of decision : October 9, 2015

Harwinder Kaur and others

..... Petitioners

Versus

Prem Singh

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Preetwinder Singh Dhaliwal, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (oral).

The challenge in the present petition is to the impugned order dated 14.9.2015 (Annexure P-2) whereby the application filed by the petitioners-plaintiffs seeking the leave of the court for instituting the suit as an indigent person has been dismissed.

Learned counsel for the petitioners submits that ownership of land measuring 1 Kanal 13 Marla would not render the petitioners as the lady of means as it is not generating any income. The trial court has committed illegality and perversity in dismissing the application. In support of his contentions he has relied upon the

judgment in Mathai M. Paikeday Vs. C. K. Antony 2011 (3) RCR (Civil) 869 to contend that the factors laid down by the Hon'ble Supreme Court for deciding the application under Order 33 Rule 1 CPC granting permission to a person to institute or proceed with the matter as an indigent person squarely support the case of the petitioners.

I have heard learned counsel for the petitioners and appraised the paper book.

The petitioners-plaintiffs have instituted the suit for claiming maintenance @ 5,000/- per month and 2500/- each for plaintiff Nos. 2 and 3, totalling 10,000/- per month by declaring the same as charge and liability on respondent and his land described in the suit.

Before deciding the application, the trial court sought the report of the Collector. As per the report it has come on record that the plaintiff No.1 is owner of land measuring 1 Kanal 13 Marlas. The operative part of the order vide which the application has been dismissed reads thus:-

“Since as per the report of Collector and as well as admission of the applicant that she is owner of the landed property measuring 1 Kanal 13 Marlas i.e. 33/575th share in total 28 kanals 15 Marlas of land comprising of Khewat No.494/450 Khatoni No. 867 situated in the revenue estate of village Bhaini Mehraj, as per jamabandi for the year 2012-13, accordingly she is not indigent person as she is owner of immovable property. Thus she cannot be declared as an indigent person. Therefore, the

instant application is dismissed.

The applicants are directed to pay the requisite court fee within 15 days from today. Now to come upon 30.9.2015 for further proceedings.”

The Hon'ble Supreme Court in paragraph 18 of the judgment in **Mathai M. Paikeday's (supra)** has culled out the following factors-

Civil Procedure Code, Order 33 Rule 1-indigent person- Whether a person was indigent or not- Held:-

“The factor such as person’s employment, status and total income including retirement benefits in the form of pension, ownership of realizable unencumbered assets, and person’s total indebtedness and financial assistance received from the family member 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.

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. “

I am of the view that since the petitioner No.1 is owning a land measuring 1 Kanal 13 Marlas, she can easily pay the court fee for claiming maintenance by cultivating the part of property of the respondents, particularly when the collector had reported that she is owner of the property measuring 1 Kanal 13 Marlas.

I do not intend to differ with the finding rendered by the trial court which is based on appreciation of oral and

documentary evidence. I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits.
Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

October 9, 2015
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