

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.02.2016

Coram

The Hon'ble Mrs. Justice PUSHPA SATHYANARAYANA

Civil Revision Petition No.3750 of 2009
and
M.P.No.1 of 2009

1.V.V.A.Kuberan
2.Neelavathi
3.Prabu

... Petitioners

vs

1.Kasturi

2.The District Collector,
Villupuram District,
Villupuram.

... Respondents

The Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair order and Decreetal order dated 11.08.2009 passed in O.P.No.62 of 2004 on the file of the Principal District Judge, Villupuram.

For Petitioners Mr.N.Suresh

For 1st Respondent Mr.S.Rajendra Kumar

For 2nd Respondent ... Mr.M.Venugopal
Special Government Pleader (C.S)

सत्यमेव जयते
O R D E R

The Civil Revision Petition has been filed against the fair order and decreetal order dated 11.08.2009 passed in O.P.No.62 of 2004 on the file of the Principal District Judge, Villupuram.

2.The suit is filed by the sole plaintiff viz., Kamalammal as a pauper for declaration of title and recovery of possession. The said plaintiff died on 4.8.2005. Thereafter, one Kasturi, first respondent herein, was impleaded as legal representative of the deceased original plaintiff and the plaint was also amended. The impleaded plaintiff has claimed that she is a pauper and hence, she wanted to continue the said suit as pauper suit. After hearing both sides, the learned Principal District Judge stated

that the plaintiff was not in a position to pay the Court fee and hence, he permitted the plaintiff to file a suit as in forma pauperies. Aggrieved by the same, a revision petition has been filed by the defendants 1 to 3.

3.Heard Mr.N.Suresh, learned counsel appearing for the petitioners, Mr.S.Rajendrakumar, learned counsel appearing for the first respondent and Mr.M.Venugopal, learned Special Government Pleader (Civil Side) appearing for the second respondent.

4.The learned counsel for the petitioners has fairly submitted that the plaintiff Kasturi is a daughter in law of the deceased plaintiff viz., Kamalammal and hence, she is willing to continue the suit in the same status. The learned counsel further submitted that the plaintiff is not an indigent person and she suppressed her wealth. Moreover, when plaintiff herself claimed only 11 cents in the suit property and as such, the suit filed for 43 cents is totally unsustainable.

5.The learned counsel for the first respondent has submitted that under Order 33 of the Code of Civil Procedure, the plaintiff is entitled to file the suit as pauper in respect of the relief sought for in the plaint. In support of his submission, the learned counsel filed a decision of this Court in K.BALAKUMAR vs. M.S.JAYAPRAKASH AND THREE OTHERS (1995 (2) CTC 562) wherein, it is held as follows:

"The scope of Order 33 C.P.C is to help the person, who is really unable to pay the court fee in respect of the relief sought for in the plaint. If the person, who filled the application, died during the pendency of the petition and the legal representative is added, the relief is sought for only by the newly added party. Therefore, if the court fee is not paid for that relief, the newly added person in the capacity as the legal heir of the original applicant, should establish that he is and indigent person. Otherwise, the suit cannot be taken on file. In this case, the appellant herein, who got impleaded as legal heir of his mother Narasammal, is substituted for the deceased person in her capacity as a plaintiff and therefore, as he wants to continue the suit as plaintiff, he has to pay either the Court fee or to prove that he is an indigent person. It is not necessary that he should file a separate petition under Order 33 Rule 1 of Code of Civil Procedure for permission to sue as an

indigent. But he is bound to amend the petition in which he got impleaded describing him as an indigent person if he prays for the exemption of the payment of court fee. As this was not done by the appellant, the lower Court has dismissed the petition. Even though I find that there is no error in the order of the court below, I feel that an opportunity must be given to the appellant to prove his indigency. Hence it is proper to remand this matter to the court below for consideration as to the indigency of the appellant."

6. Pending the revision before this Court, a report dated 19.1.2013 was filed by the Revenue Divisional Officer, Villupuram, wherein it is categorically stated that the plaintiff is a pauper as she has no other means or properties for living. The plaintiff also received a copy of the said report.

7. The Court has to decide the matter on the questions namely,
"(i) Whether the original plaintiff died during the pendency of the suit and the legal representative, who is added as new party, the newly added party has to be indigently considered about the capacity to pay the Court fee.
(ii) The newly added party, who is in the capacity as the legal heir of the original deceased indigent person, is duty bound to establish the capacity to show that she is an indigent person."

8. In the case on hand, the plaintiff, who filed a suit of informa pauperies, died on 04.08.2005 and her daughter-in-law, who is a legal heir of the deceased original plaintiff, was brought on record.

9. In view of the decision cited supra and also considering the fact that the plaintiff was impleaded as legal representative and continues the suit as an indigent person and also certified to be an indigent person by the Revenue Divisional Officer, Villupuram, the legal heirs of the original plaintiff is also an indigent person. Therefore, there is no material irregularity in the impugned order and the same cannot be interfered with. However, considering the fact that the suit is of the year 2004, the learned Principal District Judge is directed to complete the trial within a period of 60 days from the date of receipt of a copy of this order. The parties are directed to co-operate in the trial.

10.With the above said direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected M.P.No.1 of 2009 is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

cla

To

1. The Principal District Judge,
Villupuram.
2. The District Collector,
Villupuram District,
Villupuram.
3. The Section Officer
VR Section,
High Court, Madras

1 cc to Mr.S. Rajendrakumar, Advocate, Sr. 10934
1 cc to Mr.N. Suresh, Advocate, Sr. 10817

C.R.PNo.3750 of 2009

CA (CO)
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