

CMP Nos.5427 and 7565 of 2016
in A.S.SR.Nos.83213 & 83218 of 2015

R.SUBRAMANIAN, J.

These two applications have been filed by the defendant in OS.No.105/2004 and OS.No.106/2004 on the file of the 3rd Additional District Judge, Salem, seeking leave to institute the above appeal as an Indigent person.

2.The said suits were filed for recovery of money and O.S.Nos.105 & 106/2004 were decreed on 18.03.2015. The petitioner/defendant who seeks leave to file the appeal as an Indigent person has disclosed only the pension of Rs.19,252/- received by him as his asset. He has not disclosed any other assets.

3.The learned Government Pleader has filed a report dated 22.07.2016 through the Thasildar, Salem West, wherein it has been stated that the petitioner's/defendant's wife owned a house property admeasuring to an extent of 3100 sq.ft., comprised in Survey No.17/21, Patta No.781, situate in Bodinayakkanpatti Village, Salem West Taluk, and the petitioner / defendant is also doing lorry transport business in the the name and style of "SPP Transport". The petitioner would contend that the said transport business belongs to his wife, and his wife has also got debts to be repaid. The respondent decree holder has filed a counter stating that the claim of indigency is not correct.

4.Mr.S.Gopalaratnam, learned counsel appearing for the respondent / plaintiff would contend that the petitioner/defendant is not entitled to leave to file the appeal as Indigent person, Since he has suppressed the fact that he owns lands in his native village and the said properties have been attached before judgment.

5.Mr.P.B.Sampath Kumar, learned counsel appearing for Mr.M.Ravibharathi, learned counsel for the petitioner/defendant would submit that the petitioner has got only a fraction of a share in the said properties and that the Court fee payable is much more than the value of the properties and the non disclosure cannot stand in the way of the petitioner to file the appeal as Indigent person.

6.I am unable to agree with Mr.P.B.Sampath Kumar, learned counsel appearing for the petitioner / defendant, in as much as the law is settled that a person who seeks leave to file a suit as an Indigent person, must disclose all his assets and utmost good faith is expected of him. Once it is noted that there is a suppression or a non disclosure of any property, even if its value is negligible when compared with the Court fee payable, such person cannot be permitted to file the appeal as an Indigent person.

7. In view of the fact that the petitioner had suppressed the very existence of the properties at Rajapalayam Village, Thiruchengodu Taluk, as well as the retirement benefits received by him after his retirement during the year 2005, the petitioner has not come to Court with utmost good faith. Therefore, for all the above reasons, both the applications are dismissed and the petitioner is granted eight weeks time from today to pay the Court Fee.

01.11.2016

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