

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.07.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

CMA.NO.1106/2011

1.Mani @ S.Sthaniswas

2.S.Victor

3.Minor Herly Geeheralreegun

4.Minor Zoyal Raisal Rahaboth

(Minor petitioners 3 and 4 are rep.by
their next friend S.Victor)

5.S.Susairaj

6.S.Savarimuthu

7.S.Ranimethalin

8.Amalorpavamary

...Appellants

..Vs.

R.M.Gopal

...Respondent

PRAYER:- Appeal filed under Order XLIII Rule 1(4a) of C.P.C, to set aside the Fair and Decretal order dated 06.09.2010 made in P.O.P.No.2/2010 on the file of Principal District Judge's Court, Namakkal.

For Appellants : Ms.P.T.Asha

for M/s.Sarvabhauman Associates

For Respondent : Mr.T.Dhanyakumar

JUDGEMENT

The appeal is directed against the order dismissing the application filed by the appellants seeking permission to institute the suit as indigent persons.

2.The suit in P.O.P.No.2 of 2010 is sought to be filed for cancellation of the sale deed dated 29.11.2007 by the plaintiffs in favour of the defendant and for permanent injunction restraining the defendant from interfering with the plaintiffs possession of the suit property. The suit is valued at Rs.10,01,000/- (Rupees Ten Lakhs One thousand Only) and the Court fee is payable at Rs.75,076/- (Rupees Seventy Five Thousand and Seventy Six Only). Claiming that the plaintiffs

are not in possession of means to pay the Court fee, the present application was filed seeking permission to institute the proceedings as indigent persons. The respondent resisted the same contending that the plaintiffs were not indigent persons.

3. In fact, it is claimed that the family of the plaintiffs is engaged in doing goldsmith work for three generations, and one son of the first petitioner/first appellant, is running a jewellery shop in Gopalachariar Street, Rasipuram and the second petitioner namely; S.Victor, is religious preacher and he used to go to abroad often. It is also claimed that the 5th petitioner is running a ready made store at Periyakadai Veedhi at Rasipuram. The 6th petitioner is said to have completed catering and jewellery valuation course and he is employed in Agricultural Co-operative Bank. Therefore, it was contended by the respondent that the petitioners have got the sufficient means to pay the Court fee and they are also guilty of suppression of their income.

4. The learned trial Judge on a consideration of the admission made by P.W-1, in his cross examination concluded that the children of the 1st plaintiff have got sufficient means to pay the Court fee payable in the suit. Upon such finding, the learned Trial Judge dismissed the application for permission to sue as indigent persons.

5. Aggrieved by the order, the appellants have come forward with the present appeal.

6. I have heard Ms.P.T.Asha learned counsel for M/s.Sarvabhauman Associates appearing for the appellants and Mr.T.Dhanyakumar, learned counsel appearing for the respondent.

7. Ms.P.T.Asha, learned counsel appearing for the appellants would contend that the Trial Court should not have decided the application on merits without issuing notice to the Collector as per the provisions of Order 44 of the Civil Procedure Code. Though the Trial Court has not issued notice to the Collector, however, the Court on the evidence of P.W-1 himself as concluded that the plaintiffs are not indigent persons. Despite her best efforts, the learned counsel for the appellants is unable to bring home any point to enable me to interfere with the said factual finding of the trial Court. Since, it is admitted that some of the petitioners have got monthly income and they are capable of paying the Court fee, an application for leave to file the suit as indigent persons cannot be maintained. It has also been held by this Court as well as the Hon'ble Supreme Court that persons seeking to permission to sue as an indigent persons should so utmost good faith and discloses all the properties that are available with

them in the application. The petitioners have not shown any property owned by them or any income drawn by them in the application filed seeking permission to sue as indigent persons.

8. Therefore, I do not find that they are entitled to the permission, in view of the non-disclosure of the properties. Hence, the appeal is dismissed, confirming the fair and decretal order of the Trial Court. Appellants are given eight weeks time for paying the Court Fee. No costs.

-s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

KP

1. The Principal District Judge,
District Court,
Namakkal.

2. The Section Officer
High Court, Madras.

+1 CC to Ms. Saravanabhavan Associates, Advocate sr 51507.

+1 CC to Ms. T. Dhanya kumar, advocate sr 51692.

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CNR (CO)
sp (16/08/2017)

सत्यमेव जयते

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