

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2017

CORAM:

THE HONOURABLE MRS. JUSTICE. PUSHPA SATHYANARAYANA

CMA.No.961 of 2017

and

CMP No.4798 of 2017

1 . K.Arumugham
2 . A.Rajeswari ... Appellants/Plaintiffs

//vs//

1 . Mrs. S.Vijayalakshmi
2 . Mr.Ravichandran
3 . Mr.Partheeban ... Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC against the Order and Decreeal Order dated 14.11.2016 on the file of Principal District Judge, Chengalpattu, Kanchipuram District. Dismissing Indigent Original Petition No.196/2007.

For Appellants : Mr. N.Nagu Sah,

J U D G M E N T

This appeal is filed by the plaintiffs challenging the order of dismissal, to sue as an indigent person.

2. The suit was filed by the petitioners/plaintiffs to set aside sale deed dated 14.09.2006 and for permanent injunction. In para 6 of the plaint, it is stated that the plaintiffs are indigent person and they are not owning any other properties other than suit properties and they are not owning any immovable properties or cash. Hence, they are unable to pay court fees of Rs.90.075.50 and has sought for permission to sue as indigent person.

3. However, in the counter filed, it is stated that the petitioners are owning a house site to an extent of 2.5 cents in survey No.537 with thatched house bearing patta No.47 and 35 cents of land in Morappakkam Village, Maduranthagam Taluk. That

apart, it is also pointed out that the petitioners/appellants owned a Hero Honda, Splendor Plus bike bearing Registration No. TN-19-Z-2853 and to prove the same, a copy of the R.C. Book was also filed. It is further alleged that the first petitioner is doing money lending business and have savings from and out of the immovable properties. It is also stated that the second appellant possessed gold jewels.

4. The plaintiffs have not specifically denied these statements. Based on the above averments, the trial court has considered the case of the plaintiffs and stated that the plaintiffs are not indigent persons and they suppressed the fact that they are in possession of several acres of land and there is no denial about the other belongings as pointed out by the respondent. It is also held that the plaintiffs have exaggerated the value for the suit, in order to file the same as indigent person. As there is suppression of material facts, the trial court has refused to grant permission to the appellants and dismissed it.

5. In an identical situation, in P.Krishnamoorthy /vs/ Lakshmi Ammal and 4 others reported in 1991 TNLJ 4, this court has held as follows:-

The cardinal principle to guide the court on this question is that if there is an omission to disclose the assets possessed by a party who wants to prefer a lis as an indigent, as required by Order 33 Rule 2 of the Code of a Civil Procedure and if the materials on record point out fraudulent suppression and lack of bonafides, the court will have to discountenance the application as enjoined by Order 33 Rule 5(a) of the Code of Civil Procedure, and the mere fact that the assets undisclosed are of no value or of such value that even if disclosed would not enable the applicant to pay the requisite court fees is immaterial. In 1942 II MLJ 345 Chandrasekara Iyer, J. pointed out that utmost good faith is required of the petitioner, in the matter of the disclosure of his or her assets and any intentional departure from good faith, whatever the motive may be, must result in the dismissal of the petition. The above ratio was approved by a Bench of this court, consisting of Sir Lionel Leach, C.J. and Clerk, J. in ILR 1945 Madras 628 and Leach, C.J. speaking for the bench observed:

"utmost good faith is expected on the part of the applicants who seek leave to sue in forma pauperis. Motive for suppression is irrelevant. It is no use contending that having regard to the large amount of court-fee that has to be paid suppression of Rs.300/- per mensem (on

facts), would not make any difference. The point is one of good faith and not whether, in view of the large amount of court-fee the appellant who is shown to be in good faith making the application without full details would be unable to pay court fee."

In view of the above, this court finds no reason to interfere with the order of trial court, in the absence of any pleading or proof.

6. In the result, this Civil Miscellaneous Appeal is dismissed by confirming the Order and Decreeal Order dated 14.11.2016 on the file of Principal District Judge, Chengalpattu, Kanchipuram District. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The Principal District Judge,
Chengalpattu,
Kanchipuram District.

+lcc to M/s.N.Nagu Sah, Advocate SR.No.18156

KJ(CO)
GN(24/04/2017)

CMA.No.961/2017

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