

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2017

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

CMP.No.6772 of 2016
in SA.SR109238 of 2012

Sridar

...Petitioner / Appellant

Versus

Arulmigu Azhagiyanathaswamy Thirukoil,
Nagapattinam,
Represented by its Executive Officer,
Having his office at Nagapattinam Town,
Taluk and District Munsifi. ...Respondent/Respondent

Civil Miscellaneous Petition is filed under Order 44 Rule 1 of C.P.C to permit the petitioner/appellant herein to file the present Second Appeal as "an indigent person" against the Judgment and Decree dated 22.08.2012 of the learned District Judge of Nagapattinam in A.S.No.8 of 2012 conforming the Decree and Judgment dated 15.06.2011 of the learned Subordinate Judge of Nagapattinam in O.S.No.32 of 2010.

For Appellant : Mr.V.Raghupathi

For Respondent : Mr.M.Venugopal
Government Pleader (CS)

सतरामेन जयते
O R D E R

This Civil Miscellaneous Petition is filed by the petitioner to permit him to file the present Second Appeal as "indigent person" against the Judgment and Decree dated 22.08.2012 of the learned District Judge of Nagapattinam in A.S.No.8 of 2012 confirming the Decree and Judgment dated 15.06.2011 of the learned Subordinate Judge of Nagapattinam in O.S.No.32 of 2010.

2. The petitioner who is the proposed appellant in the second appeal has sought to file the appeal as an Indigent person. The suit is filed for recovery of possession and for injunction and the Court fees payable is Rs.33,825.50. The petitioner has averred in his affidavit that the respondent

temple had filed the suit for recovery of possession and the suit was decreed and it was confirmed in A.S.No.8 of 2012 on the file of District Judge, Nagapattinam.

3. It is stated by the petitioner in the affidavit in paragraph 3 that he does not possess any immovable properties except the movable properties listed in the schedule to the petition. It is also stated that he had filed the first appeal before the District Court, Nagapattinam as *informa pauperis* and prayed for exemption of payment of court fees as an indigent person. After notice to the Government Pleader, a report was drawn from the District Collector, Nagapattinam. Before that, the VAO 55, Nagapattinam has conducted full enquiry about the appellant and submitted report dated 14.10.2017, according to which, the appellant has a wife and two sons. The elder son is 21 years old and he is an Engineering graduate. The second son is also an Engineering student. The appellant himself is a driver and also doing timber business, earning around Rs.60,000/- per annum.

4. Besides, it is also stated that the petitioner has bought a house in an extent of 1500 sq.ft worth about Rs.34,00,000/-. The Revenue Divisional Officer (RDO) Mr.C.Suresh Kumar, Nagapattinam has also filed a report confirming the same. The Revenue Inspector, Thasildar, Nagapattinam has also filed a report. Wherein, it is stated that the annual income of the appellant is Rs.75,000/- per annum. Based on the report of the VAO, the Revenue Inspector, the Thasildar, Nagapattinam, and the District Collector also has filed a report confirming that the appellant is not an indigent person as stated by him.

5. Order 33 Rule 5 of C.P.C. deals with rejection of application for permission to sue as an indigent person. Order 33 Rule 5 of C.P.C empowers the Court to reject the application of an individual person where the applicant is not an indigent person. This aspect has been dealt with by this Court in P.Krishnamoorthy Vs. Lakshmi Ammal and four others reported in 1991 TNLJ 5. Admittedly, the petitioner/appellant had not even mentioned about the house owned by him as mentioned in the reports of the Revenue officials. The petitioner had no convincing explanation for not disclosing the above features relating to assets and the means.

6. Having suppressed the same, the petitioner is not entitled for the relief as prayed as the petitioner's conduct is vexatious and improper amounting to fraudulent concealment of properties owned by him. Hence, this Civil Miscellaneous

Petition is rejected. The petitioner/appellant is capable of raising funds for the purpose of paying Court fees. The learned counsel prays for time to pay the Court fees. Accordingly, four weeks time from the date of receipt of the order is granted to pay the requisite Court fee.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

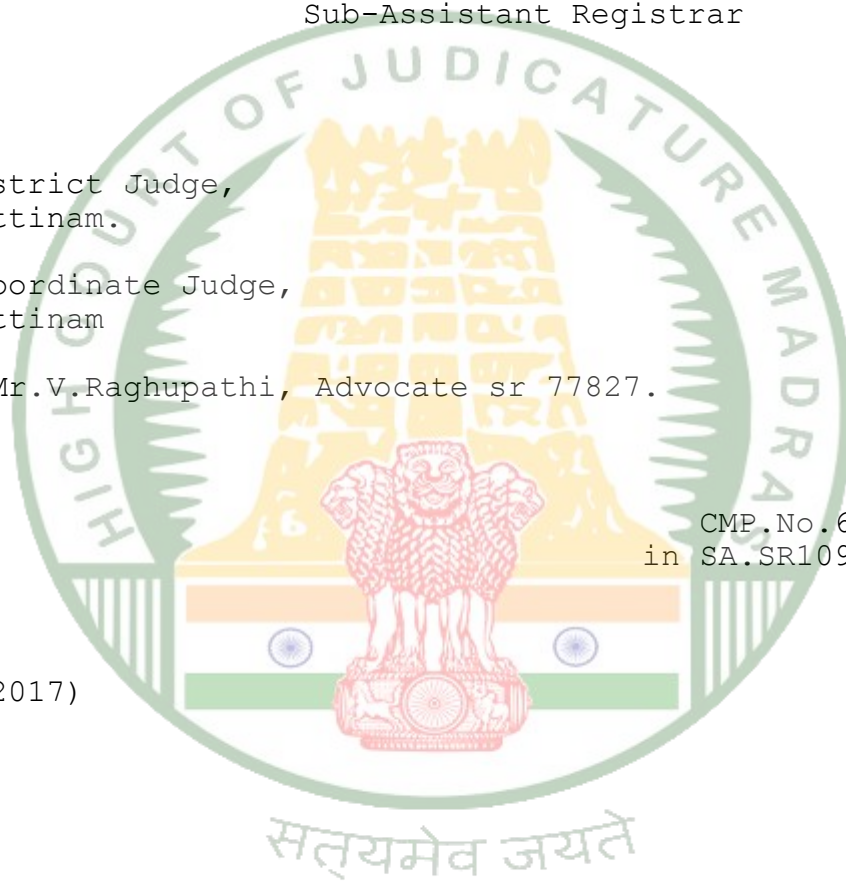
To

1. The District Judge,
Nagapattinam.
2. The Subordinate Judge,
Nagapattinam

+1 CC to Mr.V.Raghupathi, Advocate sr 77827.

CMP.No.6772 of 2016
in SA.SR109238 of 2012

SVI (CO)
SP(14/12/2017)



WEB COPY