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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A.(MD)No.508 of 2016

Mahilabaranam ... Appellant

Vs.

1.Nithya Kalyani
2.Ramalakshmi
3.Priyadharshini
4.Uma
5.Gomathi
6.Janaki
7.Valli
8.Indhra Ammal
9.The District Collector,
Thoothukudi District,
Thoothukudi. ... Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Order 43 Rule 1(na) of C.P.C. To set aside the fair and decretal order dated 06.02.2016 in Pauper O.P.No.93 of 2015 on the file of the Principal District Judge, Thoothukudi.

For Appellant : Mr.R.Nandakumar
Respondents : Mr.M.Saravanakumar for R4
Mr.S.Kadarkarai for RR5 to 8
No Appearance for RR1 to 3
Mr.D.Muruganantham, AGP
for R9

JUDGMENT

The appellant herein filed P.O.P.No.93 of 2015 before the Principal District Judge, Tuticorin. The suit prayer is for declaration and partition. A sum of Rs.16 lakhs ought to be paid as Court fee. The case of the appellant herein is that he does not possess the means to remit the said Court fee. Therefore, he invoked Order 33 Rule 1 of C.P.C.

2.The appellant examined himself as P.W.1 in the enquiry into his indigent circumstances. The appellant was cross examined at length. A mere reading of the answers given by the appellant in the cross examination would show that he is possessed of sufficient means to pay the Court fees. For instance, to a very specific

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question, he replied that he sold a property after the institution of the present proceedings and that he got a sum of Rs.15 lakhs as his share. He had purchased a car for a sum of Rs.8 lakhs. The car is having a fancy No.TN 69 AK 3939. His daughter is studying in Polytechnic and he is paying a sum of Rs.3 lakhs every year. These are only sample answers. The appellant was cross-examined at great length and it shows that his claim that he is indigent and that he is not in a position to pay the court fee is not correct. The trial Judge rightly dismissed the application filed under Order 33 Rule 1 of C.P.C. by order dated 06.02.2016. The reasons assigned by the trial Judge are sound and justified. This Court sees no ground to take a different view. There is no merit in this appeal.

3.Therefore, this civil miscellaneous appeal stands dismissed. No costs. The appellant is at liberty to remit the Court fee as per the amended act, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1.The Principal District Judge, Thoothukudi.

2.The Record Keeper,
Madurai Bench of Madras High Court, Madurai.(2 COPIES)

+1cc to Mr.S.KADARKKARAI,Advocate,SR.88830
+1cc to Mr.R.NANDAKUMAR,Advocate,SR.88823
+1cc to M/S.Special Government Pleader,SR. 89364

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