

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order : 01.11.2018	Date of Pronouncing order : 07.12.2018
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Coram

The Hon'ble Mr.Justice R.Pongiappan

C.M.A.No.1329 of 2011

Mrs.Lakshmi Ammal

...Appellant/Petitioner

Vs.

Govindasamy

...Respondent/Respondent

Civil Miscellaneous Appeal filed under Order 43 Rule 1 (a) CPC, against the order and decretal order of the Principal Sub Court, Villupuram, dismissing I.A.No.96 of 2008 in unnumbered A.S.No. of 2006 dated 17.09.2010.

For Appellant : M/s.K.Saraswathi for
Mr.C.R.Krishnamoorthy

For Respondent : Dr.S.Padma

O R D E R

Aggrieved over the order passed dated 17.09.2010, in I.A.No.96 of 2008 in unnumbered A.S.No. of 2006, on the file of the Principal Sub Court, Villupuram, the appellant has approached this Court with the present Appeal.

2. The appellant herein is the plaintiff in O.S.No.543 of 2004, on the file of the Principal District Munsif Court, Thirukovillur, i.e. Trial Court. She filed the suit seeking a decree against the defendant, who is the respondent in this Appeal for recovery of Rs.98,660/- along with interest at the rate of 9% p.a. and for certain other reliefs.

3. After an elaborate enquiry, the Trial Court, vide its judgment and decree, dated 12.04.2005, partly allowed the claim made by the plaintiff/appellant and dismissed the suit in respect to other relief. In fact, in the said judgment, the Trial Court has come to the conclusion that the appellant is entitled to a sum of Rs.11,795/-. Aggrieved over the said finding, the appellant preferred a first Appeal through District

Legal Aid Services Authority, Thirukovillur. Along with the Appeal Memorandum, the appellant has also filed an Application under Order 44 Rule 1 CPC seeking the relief to declare her as a pauper, as she is not owning any property and is not in a position to pay the Court fee required for admitting the Appeal.

4. Per contra, the respondent, who is the defendant in the suit opposed the averment made by the appellant in the said Interlocutory Application by filing a counter stating that the husband of the appellant is working as a Manager in a Jewellery Shop, named 'Sreenivasa Jewellery Stores' and earning Rs.5,000/- per month and her son is working as an Electrician and earning Rs.5,000/- per month. That apart, the appellant has put up a bricklin in the property owned by her husband by means of which, she is deriving income of Rs.1,00,000/- per year. Added to that, she is also doing money lending business. She also possesses 30 sovereign of jewels. Therefore, the respondent strongly opposed the Application filed by the appellant to sue against him as pauper.

5. Before the first Appellate Court, no witnesses have been examined on either side. Further, none of the documents have been marked as exhibits.

6. After an elaborate enquiry, the Court below dismissed the application filed by the appellant for the reason that the plaintiff paid the Court fee before the trial Court, which per se would show that she has means to contest the suit. The First Appellate Court furthermore, trusted one more reason that no evidence have been adduced by the appellant/applicant to show that she is a pauper. Challenging the said order passed in the Interlocutory Application, the present Appeal is preferred.

7. Heard both sides.

8. It would be beneficial to refer to the provision of Order 44 Rule 1 CPC for the purpose of disposal of this Appeal and the same reads as follows:-

"1 . Who may appeal as an indigent person]- (1) Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as an indigent person, subject, in all matters, including the presentation of such application, to the provisions relating to suits by indigent person, in so far as those provisions are applicable."

9. Eventhough appellant has not adduced any evidence before the First Appellate Court as proof to show that she is a pauper, in the Application before the first Appellate Court she has not added the Collector as party. The Collector is the competent person to say whether the appellant is a pauper or not. On this aspect alone, the Interlocutory Application filed by the appellant is liable to be dismissed as being devoid of merit. Though the particulars furnished by the respondent is not proved by cogent and convincing evidence, onus is cast upon the appellant to prove that she is an indigent person and she has no means. In fact, even at the time of filing the suit, the plaintiff paid necessary Court fee, otherwise, suit would not have been taken on file by the Trial Court.

10. So, after paying the Court fee before the Trial Court, the reason for her inability to pay the Court fee before the first Appellate Court has not been stated by the appellant in her affidavit filed in support of the Application. Furthermore, the suit has been filed for recovery of a sum of Rs.98,660/-, though the same is immaterial for deciding this Appeal. Thus, as already discussed, due to failure on the part of the appellant in not impleading the Collector as party respondent in the Interlocutory Application and in the absence of any material evidence to show that she has no means to pay the Court fee for contesting the first Appeal, this Court do not find any perversity or illegality in the order passed by the first Appellate Court, in dismissing the application seeking to declare the appellant as indigent person.

11. For the reasons stated hereinabove, this Civil Miscellaneous Appeal is dismissed. However, the first Appellate Court is directed to give a limited time so as to enable the plaintiff/appellant to pay the Court fee from the date of receipt of a copy of this order. If the appellant has paid the Court fee, she has to try the first Appeal according to the procedure laid down in CPC. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sub Judge, Villupuram,
2. The Principal District Munsif, Thirukovilur
3. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+lcc to Dr.S.Padma, Advocate, S.R.No.84377

C.M.A.No.1329 of 2011

GMR (CO)
CS/08/01/2019



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