

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD) No.121 of 2014
and M.P.No.1 of 2014

1.Kuppu Naicker
2.Vedagiri
3.Muniyammal
4.Dasarathan
5.Delhi
6.Chokkammal
7.Anja

Petitioners

....
Vs.
....

1.Pandurangan
2.Mari
3.The District Collector
Kancheepuram

Respondents

PRAYER : Civil Revision Petitions filed under Section 227 of the Constitution of India against the order dated 17.07.2013 made in Indigent O.P.No.15 of 2008 on the file of the Principal District Judge, Chengalpet.

For Petitioners : Mr.T.S.Vijayaraghavan

For Respondents : Mr.R.Ragavendran for
Mr.R.Murali for R1 & R2

No appearance for R3

ORDER

This Civil Revision Petition is filed against the order dated 17.07.2013 made in Indigent O.P.No.15 of 2008 on the file of the Principal District Judge, Chengalpet.

2. The petitioners are the defendants 1 to 4 & 6 to 8, first respondent is the plaintiff and the respondents 2 & 3 are 5th & 9th defendant respectively in Indigent OP No.15 of 2008 on the file of Principal District Cum Sessions Judge, Chengalpet. The first respondent filed the said OP for permission to file the suit as indigent person claiming a sum of Rs.30,00,000/- as compensation against the petitioners and respondents 2 & 3. According to the first respondent, the petitioners assaulted him on 11.03.2004 and caused injuries to him. Due to the injuries, the first respondent was admitted in CMC Government Hospital, Chengalpet and was taking treatment till 06.05.2004 and underwent surgeries. The first respondent was again admitted in the hospital on 10.06.2006 and discharged on 27.06.2006 during which period he underwent surgery for removal of plate fixed in the earlier surgeries. He was practicing alternate medicines and due to the injuries caused by the petitioners and the second respondent, he could not do the work as

done earlier. He has no movable or immovable property for payment of court fee and he did not sell any property within six months prior to filing of the OP.

3. The petitioners filed separate counters and contended that the first respondent is not an indigent person and he has movable and immovable properties as mentioned in the counter and he owns a house at Kolanthancheri village besides two oil engines. He also owns 0.03 cents of house site at Villiambakkam and 5 acres of land in Kundhagan Erangadu. He owns a tractor, motor bike and three cycles. He also owns 2 buffaloes, 7 cows and 28 goats. He has sold Eucalyptus trees, Kattu Vazhai and Palmyrah for a sum of Rs.15,000/- and he also sold 7 acres of land in Kolathancheri to ABC Chambers owned by Kalyanasundaram. The first respondent has suppressed all the above facts and filed the present OP to avoid payment of court fee. The suit filed by the first respondent is barred by limitation and no cause of action has arisen to file the suit. The petition is not filed as per the provisions of Order 33 CPC. Only to blackmail the petitioners, the first respondent has come out with the present petition.

4. The learned Judge, considering the averments in the OP petition, counter statement and the evidence let in by the parties, allowed the OP permitting the first respondent to file suit as a indigent person.

5. Against the said order dated 17.07.2013 made in Indigent O.P.No.15 of 2008, the present Civil Revision Petition is filed by the petitioners.

6. The learned counsel for the petitioners contended that the first respondent is not an indigent person. The alleged accident took place on 11.03.2004, whereas the first respondent has filed the present OP only on 05.04.2007 and claim of the first respondent is barred by limitation. The learned counsel for the petitioners further submitted that Ex.P1 certificate issued by the Village Administrative Officer is not a valid document to prove the status of the first respondent to file a suit as an indigent person. In support of his contention, the learned counsel for the petitioners relied on the following judgments -

(a) AIR 1959 SC 798 (V46 C 107) [Balakrishna Savalram Pujari Waghmare and others v. Shree Dhyaneshwar Maharaj Sansthan and others]

(b) MANU/TN/0351/1970 Rajkumar Bhagwatsaran v. V.P.V.Rajan and others]

(c) AIR 1994 Delhi 161 [Faqr Chand (thro'LRs) v. Lila Ram (thro'LRs)

(d) 2011 (1) LW 235 [T.Matheswari v. T.G.Tulasi]

(e) AIR 1940 Lahore 359 [Khair Mohd. Khan v. Jannat & Others (FB)

7. Per contra, the learned counsel appearing for the first respondent submitted that after assault by the petitioners and the second respondent on 11.03.2004, the first respondent was admitted in CMC Government Hospital, Chengalpet and he was continuously taking treatment. He also underwent surgery on 19.06.2006 for removal of plate. In view of the same, suit is not barred by limitation. The learned counsel for the first respondent further contended that the petitioners have not proved their claim that first respondent is owning movable and immovable properties and he sold 7 acres of land in Kolathancheri to ABC Chambers owned by Kalyanasundaram. The first respondent is not owning any immovable properties and Ex.P1 is the certificate issued by a competent person and the order of the learned Judge is valid and prayed for dismissal of the Civil Revision Petition.

8. Heard the learned counsel for the petitioners as well as respondents 1 & 2 and perused the materials available on record.

9. From the order of the learned Judge, it is seen that no notice was issued by the learned Judge to the concerned District Collector, third respondent herein and no report with regard to the status of the first respondent was obtained from him. In view of the failure on the part of the learned Judge, the impugned order is liable to be set aside and it is hereby set aside. The matter is remanded back to the Trial Court and the learned Principal District Judge, Chengalpet is directed to get the report from the third respondent herein, District Collector, Chengalpet, with regard to the status of the first respondent and after issuing notice to all the parties and hearing them, including the Government Pleader afresh, pass orders on merits and in accordance with law.

10. In view of the order remanding the matter back to the Trial Court, the issue whether the suit is barred by limitation or not is not decided and hence the portion of the judgments relied on by the learned counsel for the petitioners in this regard are not extracted hereunder.

11. In the result, this Civil Revision Petition is allowed and the matter is remanded back to the Trial Court. Parties are directed to let in evidence, if they so desire. It is open to the petitioners to raise the issue of limitation, after the suit is numbered. No costs. Consequently, connected Miscellaneous Petition is closed.

26.02.2018

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Index : Yes

To

The Principal District Judge,
Chengalpet.



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V.M.VELUMANI, J.

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