

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1950 of 2015

Babu @ Antoine

.. Petitioner

Vs.

Lily @ Uma

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.01.2015 made in I.A.No.15 of 2013 in un-numbered A.S.No.Nil of 2013 on the file of the Principal District Court, Pondicherry.

For Petitioner : M/s.R.Sripriya
for Mr.V.Raghavachari

For Respondent : Mr.T.P.Manoharan,
Senior Counsel,
for Mr.K.P.Jotheeswaran

: Mr.J.Kumaran,
Government Advocate (Pondicherry)

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 21.01.2015 made in I.A.No.15 of 2013 in un-numbered A.S.No.Nil of 2013 on the file of the Principal District Court, Pondicherry.

2.The petitioner is the plaintiff and respondent is the defendant in O.S.No.102 of 2002 on the file of the Additional Sub Judge, Pondicherry. The petitioner filed the said suit for declaration to declare that the suit property belongs to him and he is the absolute owner of the property and for recovery of possession. The said suit was decreed and respondent filed appeal, along with I.A.No.15 of 2013 for permission to file and prosecute the appeal as indigent person. The petitioner filed counter affidavit and contended that the respondent is owning a vacant plot comprising in T.S.No.41, R.S.No.74/9, measuring 59 sq.meter or 635 sq.feet at Vaithikuppam, Pondicherry. It is worth Rs.14,09,700/-. The petitioner also contended that the respondent has sufficient means to pay the Court fee. Her son, Kirubhakaran is working in France since 2009 and is earning two lakhs per month and he is sending money regularly to his mother. The respondent is working in French Library and is getting Rs.15,000/- per month. Before the learned Judge, along with the counter affidavit, the petitioner filed certified copy of the sale deed dated 11.09.1996 in favour of the respondent, Encumbrance Certificate dated 13.09.2013 and the photocopy of the Government guideline value dated 12.08.2013.

3.The learned Judge considering the averments in the affidavit, counter affidavit and the letter dated 21.08.2014 from the Government of Pondicherry, Office of the District Collector, addressed to the Government Pleader, allowed the application.

4.Against the said order dated 21.01.2015 made in I.A.No.15 of 2013 in un-numbered A.S.No.Nil of 2013, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel for the petitioner contended that the respondent is owning a vacant plot as mentioned in the counter affidavit, which is worth Rs.14,09,700/-. The petitioner has produced certified copy of the sale deed. The learned Judge has not considered the said documents and contention of the petitioner that respondent is owning the said property. In the letter addressed to the Government Pleader, the Revenue Officer has not stated whether the respondent is owning any immovable property or status of the respondent. The learned Judge erred in allowing the application without considering the above facts and the documents filed by the petitioner.

6.The learned Senior counsel for the respondent contended that the respondent is not owning any property. She has no means to pay Court fee. The learned Judge allowed the application relying on the report of the District Collector dated 21.08.2014. The payment of the Court fee is only between the respondent and State and the petitioner has no locus standi to challenge the said order. Already the State has filed the report. Relying on the report of the Revenue records, the learned Judge has passed order. The Civil Revision Petition is therefore not maintainable.

7.In support of his contentions, the learned Senior Counsel for the respondent relied on the judgments reported in:

(i)1994-1-L.W.381 (K.Mariappan V. Ranganayaki):

"2.....It is well settled that the expression 'possession of sufficient means' does not mean possession of sufficient property. It is possible that one may be possessed of sufficient property but still may not be possessed of sufficient means. It will depend on the nature of the property. It will also depend on whether the person concerned can easily come in possession of sufficient means. All this varies from case to case. As pointed out in A.I.R.1994 H.P.1, the provisions of O.33, R.1, C.P.C, have been enacted to enable poor persons to seek justice by filing suits or appeals without court-fee and in this context, the sufficient means would not be sufficient property and includes such means on which the bare living of the plaintiff or the appellant and the members

of his family is dependent. In fact, what is intended is capacity to raise funds by normal and available lawful means and not by any means whatsoever, improper or illegal. It cannot be the purpose of this legislation that the indigent person should first deprive himself of the sole means of livelihood or alienate all his assets and seek justice in penury. While so, it is evident that the Court below is justified in permitting the respondent to sue in forma pauperis and I find no merit in the Civil Revision Petition."

(ii) 1997-2-L.W.188 (Karthikeyan - Minor adopted son of Late Janaki N.Rajaramier, by his natural mother and next friend, J.G.Narmatha V. K.K.Ramesh Babu & 14 others):

"32.While considering the question whether the petitioner is entitled to sue as an indigent person, the only competent person to oppose the same is the State. I do not find that the State has filed any objection in this case.

33.Being a matter affecting the Revenue, the statement, if any, of the State must be of primary importance, and if they have no serious objection in permitting the litigant to sue as an indigent person, the same would be ordinarily accepted.

34.In A.I.R. 1961 Allahabad 308 (Chhail Behari Lal and others V. Phool Chand and others), that High Court accepted the statement of the Government Pleader that they have no objection in the plaintiff filing a suit in forma pauperis, even though the defendant opposed the same, it was held thus:

"In an application for leave to sue as pauper, if the Government Pleader makes a statement to the Court in favour of the applicant, the Court must attach the utmost importance to

it as emanating from the State in whose interest the Court-fees Act has been enacted, and which makes an inquiry before conceding the pauper's case as it stands to lose revenue if the application is allowed. If the Government's statement is in favour of the pauper it should ordinarily be accepted by the Court unless the respondent can show fraud or collusion or any other convincing reason why it should be discarded."

35. In 1971 K.L.R.452 (Ouseph V. State and another), it was held thus:

"....The party vitally concerned in the result of application by the plaintiffs for permission to sue in forma pauperis is the State which stands to lose revenue in the event of permission being granted. It is true that the defendant is also entitled under O.33, Ru.6 to oppose the application and lead evidence to disprove plaintiff's allegation of pauperism. But, in the assessment of the evidence, and consideration of the other relevant circumstances, the starting point for the Court should be the statement of the State."

36. In view of the above reasons, I do not find any justification in upholding the order of the Court below. The petitioner is permitted to sue as an indigent person. On receipt of a copy of the Order, the Court shall register the petition as a plaint under Or.33, R.8, C.P.C and proceed with the same in accordance with law."

8.Mr.J.Kumaran, learned Government Advocate, Pondicherry submitted that as per the order of this Court, he has addressed the Revenue Officer to produce the report with regard to the status of the respondent and he has not received any report so far.

9.Heard the learned counsel for the petitioner, learned Senior Counsel for the respondent as well as the learned Government Advocate and perused the materials available on record.

10.From the materials available on record, it is seen that the respondent has sought permission to file First Appeal as an indigent person on the ground that she has no means to file Court fee. On the other hand, the sale deed dated 11.09.1996 shows that respondent is owning a vacant land comprising in T.S.No.41, R.S.No.74/9, measuring 59 sq.meter or 635 sq.feet at Vaithikuppam, Pondicherry. The said sale deed dated 11.09.1996, Encumbrance Certificate dated 13.09.2013 and the photocopy of the Government guideline value dated 12.08.2013 were filed along with the counter affidavit before the Principal District Judge, Pondicherry. The learned Principal District Judge failed to consider those documents. Further, the report of the Revenue records dated 21.08.2014 addressed to the Government Pleader does not reveal

the status of the respondent whether she is an indigent person or has means to pay the Court fee. The learned Principal District Judge failed to call for the report of the Revenue Department with regard to the status of the respondent. The learned Government Pleader has stated that he is yet to receive report from Revenue Officer regarding status of the respondent. The judgments relied on by the Senior Counsel for the respondent do not advance the case of respondent as Government Pleader has not stated that respondent has no means to pay Court fee and the learned Judge has not considered the documents filed by the petitioner. In view of the same, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. The learned Principal District Judge is directed to call for the report of the Revenue Department with regard to the status of the respondent, especially whether the respondent is owner of the property mentioned in the sale deed dated 11.09.1996 and whether the respondent is working as a librarian in French Library and if so, the salary received by her to be produced.

11. With the above direction, the Civil Revision Petition is allowed. No costs. The I.A.No.15 of 2013 is remanded to the learned Principal District Judge. The learned Principal District Judge

is directed to call for the report within a period of four (4) weeks from the date of receipt of a copy of this order and dispose of the appeal within a period of four (4) weeks thereafter.

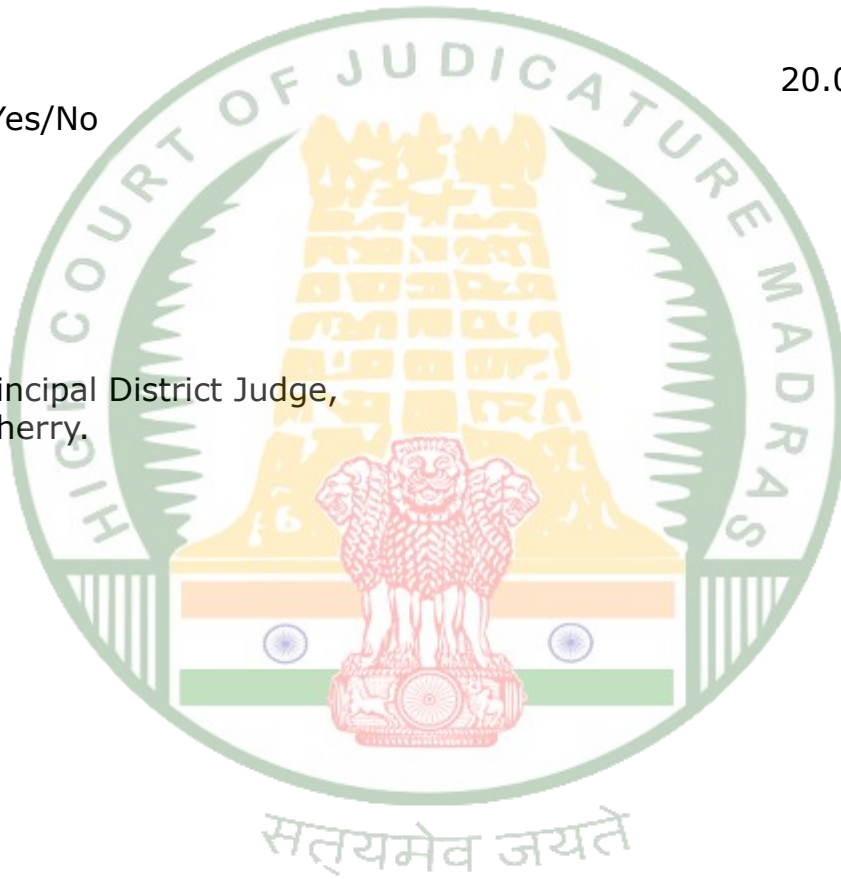
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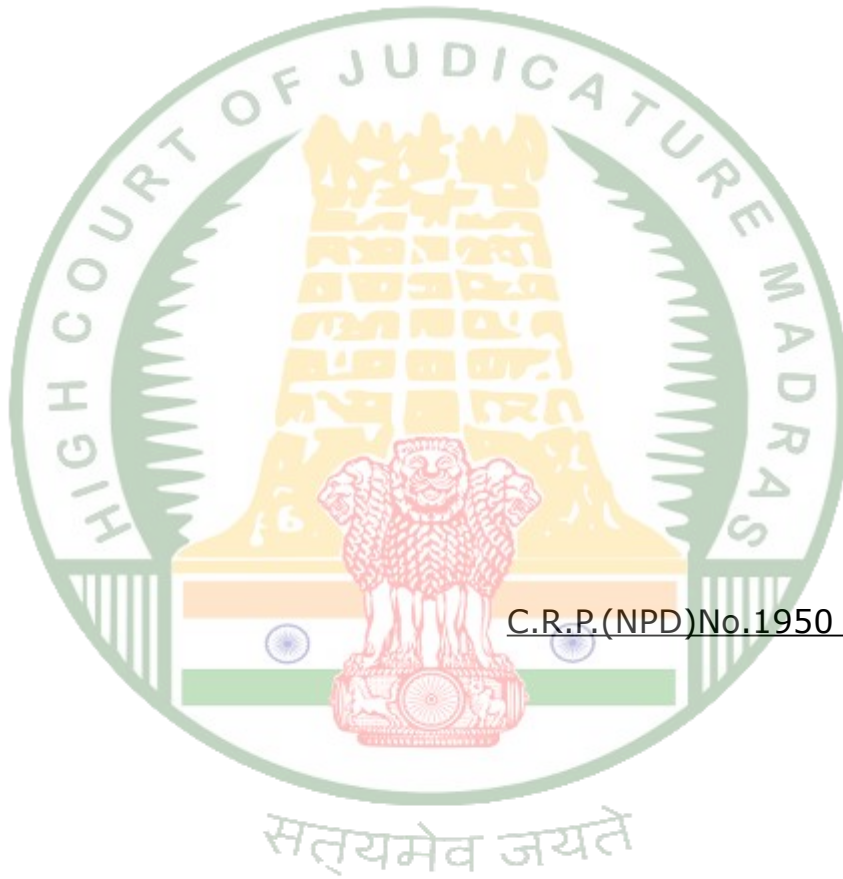
The Principal District Judge,
Pondicherry.



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V.M.VELUMANI,J.

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