

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

C.M.A.No.3001 of 2010

A. Thanikachalam ... Appellant/Petitioner (Plaintiff)

Vs.

1. Kondikkara Subbaraya Gounder

2. Perumayee

3. Palaniammal

4. Yogalakshmi

... Respondents/Respondents (Defendants)

PRAYER: Civil Miscellaneous Appeal filed under Order 43 Rule 1 (na) of Civil Procedure Code, against the fair and final order dated 08.10.2007 in P.O.P.No.24 of 2006 on the file of the Additional District Judge (Fast Track Court No.I), Salem.

For Appellant : Mr.J.Prithivi  
for Mr.S.Kaithamalai Kumaran  
For R1 and R2 : Ms.Zeenath Begum  
R3 and R4 - Ex parte

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the order passed in P.O.P.No.24 of 2006 dated 08.10.2007 on the file of the Additional District Judge (Fast Track Court No.I), Salem.

2. The petitioner filed the petition to sue as an indigent person stating that he has no independent income or movable or immovable property to pay Court fee. The reports from the Tahsildhar were called for by the Court and it is certified that the petitioner has no movable and immovable properties at Vattakkadu, Thathangaiyarpur Post, Omalur Taluk, and the Tahsildhar has certified that the petitioner is a pauper.

3. The trial Court considered the issue as to whether the petitioner is a pauper or not, solely on the basis of the averments made by the defendants in the counter. But, there is no specific details about the property possessed by the petitioner or the income derived from the said property. Omnibus averments were made in the counter statement that the petitioner possesses property and gets more income.

4. The District Judge, without assigning any reasons and without application of mind, has simply rejected the petition on the ground that the petitioner is drawing more income.

5. From a perusal of the records, I do not find any material to show that the petitioner possesses any property and he is capable of paying Court fee. The report of the Tahsildhar has also certified him as a pauper. In the absence of any material evidence, the trial Court ought to have permitted the petitioner to sue as a pauper. The order passed by the District Court is without any basis or reason and therefore, the same is liable to be set aside.

6. In the result, the order dated 08.10.2007 in P.O.P.No.24 of 2006 on the file of the Additional District Judge (Fast Track Court No.I), Salem, is set aside and the petitioner is permitted to sue as an indigent person.

7. Accordingly, this Civil Miscellaneous Appeal is allowed and the trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The Additional District Judge  
(Fast Track Court No.I),  
Salem.

2.The Section Officer,  
VR Section, High Court, Madras.( 2 Copies)

+1cc to Mr.AK.Kumarasamy, Advocate SR.No.19014  
+1cc to Mr.Zeenath Begum, Advocate SR.No.18891

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RSK (CO)  
GN(12/04/2018)