



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 16.08.2017

DELIVERED ON: 06.02.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A (MD) No.435 of 2017

and

C.M.P (MD) No.4660 of 2017

Pushpammal

... Appellant / Petitioner

Vs.

1.Elizabeth

... 1st respondent/1st respondent

2. The District Collector,
Thoothukudi.

... 2nd respondent/2nd respondent

PRAYER:- Civil Miscellaneous Appeal filed under Order 43 Rule 1 of C.P.C, to set aside the order of the Principal District Judge, Thoothukudi made in Pauper O.P.No.131 of 2016 dated 08.11.2016 and allow this appeal.

For Appellant : Mr.C.Arunmozhi Rajashankar

For R-1 : Mr.P.Banuprasath

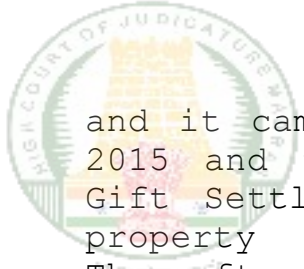
For R-2 : Mr.R.Velmurugan,
Government Advocate

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant, to set aside the order of the Principal District Judge, Thoothukudi, made in Pauper O.P.No.131 of 2016 dated 08.11.2016 and allow this appeal.

2.The brief facts of the case of the appellant are as follows:

The appellant gave birth to thirteen children and five of them died without getting marriage and the remaining were seven sons and one daughter. The appellant lived with her daughter/first respondent herein till 2015 and helped her with her income as School Assistant. Under the guise of mortgaging the property, the first respondent had took the appellant to the Sub-Registrar Office, Kellur and obtained a Gift Settlement Deed in her favour



and it came to the knowledge of the appellant only in the year 2015 and therefore, the appellant had cancelled the fraudulent Gift Settlement Deed and in alternative, wrote a Will for her property giving share to the first respondent also. Thereafter, the first respondent filed W.P(MD)No.17158 of 2015 for quashing the Cancellation of Settlement Deed as illegal and ultravires and the same is pending. Therefore, the appellant decided to file a suit for declaration and permanent injunction in respect of her properties. Since the appellant did not have any means to pay the Court fee of Rs.1,20,001/-, she has filed Pauper O.P.No.131 of 2016. The said application was dismissed by the trial Court stating that the sons of the appellant are having vested interest over the property and they have to pay necessary Court fees. Aggrieved by the same, the appellant has come forward to file this Civil Miscellaneous Appeal.

3. The learned counsel appearing for the appellant would submit that since the appellant had discharged the mortgage created by the appellant by assisting her financially, she cannot be construed as well off and therefore, the trial Court ought not to have dismissed her petition and therefore, prays for setting aside the order passed by the trial Court.

4. The learned counsel appearing for the first respondent would submit that the appellant filed a suit praying for the relief of declaration in respect of the scheduled properties and for permanent injunction and to cancel the settlement, which was registered vide document No.871/2011, dated 07.03.2011. Along with the suit, the appellant filed a petition to declare the appellant as Pauper, seeking exemption to pay the Court fee, in which, the first respondent filed her counter-affidavit and contested the case stating that the appellant had sufficient means. On 07.03.2011, the appellant had executed a settlement deed and after changing the revenue records in the name of the first respondent, the appellant on 22.07.2015 has cancelled the settlement deed executed in favour of the first respondent and executed a Will and therefore, the first respondent filed a Writ Petition before this Court in W.P(MD)No.17158 of 2015 seeking for issuance of a Writ of Certiorari to cancel the cancellation deed, dated 22.07.2015 and notice was ordered in that writ petition and in the said writ petition, the appellant has also entered appearance and the Writ Petition is pending before this Court and subsequent to that, the appellant filed a suit for declaration and for permanent injunction along with an application to declare her as pauper. But, the appellant has got sufficient means and therefore, prays for dismissal of this appeal.

<https://hcservices.courts.gov.in/hcservices/> The learned counsel appearing for the first respondent relies on the judgment of the Honourable Supreme Court of India reported in **(2011) 13 Supreme Court Cases 174 (Mathai M.Paikeday**



vs. C.K.Antony), wherein references have been made to the following Judgements:

- (i) In *A.A.Haja Muniuddin v. Indian Railways* reported in (1992) 4 SCC 736;
- (ii) In *Union Bank of India v. Khader International Construction* reported in (2001) 5 SCC 22; and
- (iii) In *R.V.Dev v. Govt. of Kerala* reported in (2007) 5 SCC 698;

6. The relevant portion of the judgement cited supra is extracted hereunder:

"18. To sum up, the indigent person, in terms of Explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay Court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such Court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person.

19. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realisable unencumbered assets, and person's total indebtedness and financial assistance received from the family members or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite Court fee. Therefore, the expression "Sufficient means" in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity or a person in the ordinary course to raise money by available lawful means to pay Court fee.

20. Admittedly the respondent is a retired Deputy Conservator of Forests, Government of Kerala and drawing a pension of Rs.10,500. It was also stated by him in his deposition before the High Court on 3-1-2008 that his son is employed abroad and does not regularly send him money and in response to a suggestion, whether his bank account discloses the amount of money sent by his son, he does not deny the suggestion. However, it is noteworthy to mention that the respondent has never



denied that his son sends him money received from his son is not substantial or insufficient to pay the Court fee by not producing passbook of his bank account. In our considered opinion, non-production of bank account transaction details, amounts to suppression of the facts and in view of this, an adverse inference can be drawn against the respondent that he is receiving a substantial or sufficient amount of money from his son. Therefore, the amount of money received by the respondent from his son and by way of pension amounts to a sufficient means to pay the Court fee which disentitles him to be an indigent person under Order 33 Rule 1 and Order 44 Rule 1 of the Code of the Civil Procedure."

7. This Court heard the rival submissions and perused the materials placed before it.

8. A perusal of the records shows that the Court below while answering the point 'whether the appellant can be declared as an indigent person', at paragraph No.9 of the order, has discussed as follows:

"9..... The petitioner herself admits that, she is under the care and custody of her sons. She is having 7 sons and one daughter, the 1st respondent herein. Her sons are doing some work and living separately with their respective family. When the senior citizen, the petitioner herself living under the care and custody of her 7 sons are having some income and also one of her son, who is the actual beneficiary is in possession under the litigation. Moreover, the petitioner herself admits that, on her permission the 1st respondent also in possession of portion of the property. Therefore the dispute is between the family members. When the petitioner is having 7 sons and are living separately, they have some considerable income. Sons are beneficiary under the litigation. So the claim of indigent person by the petitioner is not acceptable. Even though she is incapable of paying Court fee, the original beneficiary her sons are able to pay the Court fee. Under such circumstances, the petitioner could not be declared as indigent person. Consequently, the petition deserves to be dismissed and the point is answered accordingly."

<https://hcservices.courts.gov.in/hcservices> of the above, the judgment relied on by the learned counsel for the first respondent, is squarely applicable to the present case on hand. The Court below having found that the sons



of the appellant are the beneficiaries under the litigation, has rightly dismissed the Pauper O.P filed by the appellant and therefore, the appellant's claim as an indigent person, cannot be accepted.

10. Therefore, this Court is of the view that there is no infirmity in the order passed the Court below and the same does not warrant interference at the hands of this Court.

11. In the result, this Civil Miscellaneous Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To,

1.The Principal District Judge,
Thoothukudi.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

- 1 cc TO Mr.C.Arunmozhi Rajashankar , Advocate in SR No. 47092
- + 1 cc TO Mr.P.Banuprasath , Advocate in SR No. 46719

pm
AE/SKN RSK/SAR3/26.02.2018/5P/6C

C.M.A(MD)No.435 of 2017
06.02.2018