



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018
(Reserved on 19.09.2017)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA (MD) No.734 of 2017
and
CMP (MD) No.7897 of 2017

1) D.Ganesan
2) G.Padma Ganesan
3) R.Gomathi Eswari ... Appellants

vs.

P.Premkumar ... Respondent

Appeal filed under Section 104 read with Order 43 Rule 1(na) of the Civil Procedure Code, against the fair and decreetal order dated 09.11.2016 in Indigent O.P.No.3 of 2015 on the file of the Principal District Judge, Trichy.

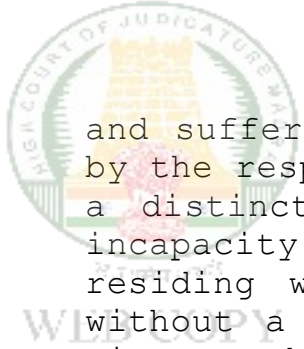
For Appellants : Ms.U.Nirmalarani

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the fair and decreetal order dated 09.11.2016 in Indigent O.P.No,.3 of 2015 on the file of the Principal District Judge, Trichy.

2.Learned counsel for the appellants would submit that the 1st appellant is husband of 2nd appellant and 3rd appellant is their daughter. There has been a dispute between the respondent and his brother since 2005 over the house in which the 3rd appellant and her husband are residing. The respondent is residing next to the 3rd appellant's house and both the properties belonged to the father of the respondent. There was some dispute between the appellants and respondent. While so, the respondent kicked the father of the 1st appellant, in which, he sustained injuries. Due to the said incident, the appellants claimed Rs.25,12,469/- as damages from the respondent for the mental agony caused by him to the appellants.

3.It is further submitted that the 1st appellant is aged 77 years and he is getting pension of Rs.16,360/- per month and the respondent is bound to compensate the 1st appellant for the pain



and sufferings undergone by him due to the violent gush made out by the respondent. The 2nd appellant is aged about 69 years she has a distinct and separate pain for herself due to the physical incapacity of the 1st appellant. The appellants 1 and 2 are residing with the 3rd appellant. The 3rd appellant owns a car without a driver and also owns two plots. The two plots were given to her elder sister by name, Mrs. Shymala Devi and when the 3rd appellant's husband suffered a stroke and hospitalized for treatment, she executed a sale deed to her sister for medical expenses of her husband.

4. Learned counsel for the appellants would further submit that the 3rd appellant's husband owned a house site in Navalur Kuttappattu Village of Trichy District and it was disposed to meet the loans raised for hospital expenses. Therefore, the 3rd appellant cannot touch any of the meager part of cash which is available with her and the appellants have no means to pay the court fee. He has not entered into any agreement with anybody within the period stipulated under the Act either for sale or for purchase of any property. Now, the appellants have no source of income to pay the court fee. Therefore, the learned counsel contended that if the appellants are not allowed to sue as indigent persons, they will be put to irreparable loss and hardship. It is also contended that even though they are having immovable properties and deposit receipt, it cannot be possible to collect the money or alienate the properties. Hence, they filed a petition to permit them to sue as indigent persons without paying the court fee. The Court below by impugned order dated 09.11.2016, dismissed the indigent O.P and directed the appellants to pay the Court fee of Rs. 1,88,438/- on or before 8.12.2016. Aggrieved against the said order, the appellants have filed this appeal. In support of her contention, learned counsel for the appellants relied on the judgment of the Supreme Court reported in (2011) 3 SCC 174.

5. The respondent filed counter in the indigent O.P. stating that petition is not maintainable. The appellants are intentionally creating problems among the defendant and his brother. Now, the respondent's brother Rajkumar is unconscious for the past several years and the appellants are not providing essential treatment to him. According to the respondent, the appellants are money grabbers. The husband of 3rd appellant/Rajkumar is in sickness. But, he has properties through which, he is receiving rental income. The respondent further contended that the 3rd appellant is working as a Lecturer in a private college and earning more than Rs. 35,000/- and she also admitted that she owns car which clearly shows that the appellants are having sufficient financial sources to pay the court fee. Further, the appellants are having movable and immovable properties and deriving huge amount from it and therefore, the



petition filed by the appellants seeking permission to sue as indigent persons is liable to be dismissed.

6. Heard the learned counsel for the appellants and perused the materials available on record.

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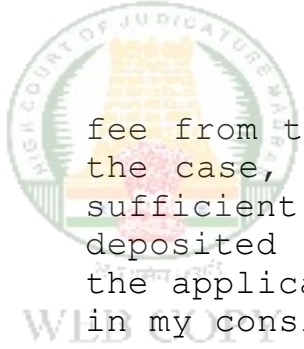
7. Perusal of the record shows that to prove the case of the appellants, 3rd appellant was examined herself as PW1 and in the cross examination, PW1 has admitted that all the appellants are having valuable immovable property and deposit receipt in their names and further, two plots are in the names of the appellants at Chennai. The Court below rejected the contention of the appellants that even though they are having properties, they are not deriving income from the properties, holding that the appellants have not specifically stated the reason to file the petition to sue as indigent persons.

8. Perusal of the records shows that to prove the case of the appellants, 3rd appellant examined herself as PW1. The Court has gone through the examination of PW1 and found that all the appellants have got valuable immovable properties, deposit receipts in their names and they also possessed plots at Chennai. Learned counsel for the appellants would submit that though the appellants are having properties, they are unable to derive income from the said properties. Perusal of records shows that the appellants have not stated the reason to file the petition as indigent persons. In my considered opinion, PW1 evidence is not sufficient to prove the case of the appellants that they are indigent persons. The judgment relied on by the learned counsel for the petitioner is not applicable to the present case as the appellants could have derived money through the properties by obtaining loan. They have also got deposit receipts.

9. Before the Court below, learned counsel for the respondent relied on a decision of this Court in Krishnammal vs. Senthil (CRP (PD) No. 847/2006), wherein, it has been held as follows:-

'Moreover, the factors such as persons employment status and total income including retirement benefits in the form of pension, ownership of realisable unencumbered assets, and persons 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.'

10. The above case is squarely applicable to substantiate the case of the respondent. In the present case, the appellants have failed to prove that even from the immovable properties standing in their names, they are unable to derive amount. The appellants failed to establish that they had taken efforts to raise money through the properties and they also took steps to pay the court



fee from the deposit receipts. In the facts and circumstances of the case, this Court is of the view that the appellants have got sufficient means to raise loan or to pay court fee from the amount deposited by them and therefore, the learned Judge has dismissed the application of the appellants to sue as indigent persons which in my considered opinion does not warrant any interference by this Court.

Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Trichy.

+ 1 cc TO Ms.U.Nirmalarani , Advocate in SR No. 44828

bala
AE/JC/SAR1/09.02.2018/4P/3C

order made in
CMA(MD) No.734 of 2017
29.01.2018