



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

WEB COPY

C.R.P (MD) (PD) .No.2307 of 2017

and

C.M.P (MD) .No.11176 of 2017

1. Ramaraj
2. Subbulakshmi ... Petitioners

vs.

1. Seenivasan Naicker
2. Saroja
3. Gandhimathi
4. Kasthuri

5. State of Tamil Nadu,
represented through District Collector,
Virudhunagar. ... Respondents
(R2 to R5 given up as set ex-parte)

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 03.10.2017 made in P.O.P.No.1 of 2016 in O.S.(Un Numbered) of 2017 on the file of the Additional District Judge, Virudhunagar.

For Petitioners : Mr.P.Santhosh Kumar
For R-1 to R-4 : Mr.I.Velpradeep
For R-5 : Given up

O R D E R

The first respondent herein filed P.O.P.No.1 of 2016 under Order 33 Rule 1 CPC r/w Order 7 Rule 1 CPC. The Court below ordered notice to the Government. But then, the Government remained ex-parte. After hearing both the parties, who had adduced evidence, the Court below granted leave to the first respondent herein to sue as an indigent person. The said order is under challenge in this Civil Revision Petition.

2.The learned counsel appearing for the revision petitioners contended that as per Order 33 Rule 1A of CPC, every enquiry into the question of indigence shall be made at the first instance by the Chief Ministerial Officer, unless the Court otherwise directs. The Court may adopt the report of such Officer as its own finding or may itself make an enquiry into the question. The learned counsel for the revision petitioners would argue that the Government had no option of remaining ex-parte in such matters.



He further contended that inasmuch as the report from the Government was wanting, the order in question is bad in law and liable to be set aside. I am unable to agree with the said submission of the learned counsel for the revision petitioners.

WEB COPY

3.As rightly pointed out by the learned counsel for the first respondent, it is not as if the Court below straight away granted leave to the first respondent to sue as indigent person. It had ordered notice to the Government and the Government shows remained ex-parte. Thereafter, the enquiry was conducted by the Court itself. The revision petitioners adduced evidence and the first respondent also examined himself.

4.In this circumstances, there has been more than substantial compliance of the procedure set out under Order 33 Rule 1A CPC.

5.As rightly pointed out by the learned counsel for the first respondent, the issue of payment of Court fee is a matter, that is entirely between the Court and the plaintiff. The only person, who can be aggrieved, is the State because it has of revenue implications, but in this case the State chose to remain ex-parte. The defendants stands prejudice in no way on account of grant of leave. The learned counsel for the first respondent also placed reliance on a decision of High Court of Uttarpradesh reported in **(2008) 38 AILR 305/(2000) 1 AWC 345/(2000) 1 JCLR 232/(1999) 0 Supreme (AII) 1405** in the case of ***Hari Kishan Gupta and others Vs. Civil Judge and others***. The said decision is squarely applicable to the facts and circumstances of the case. Inasmuch as the rights of the revision petitioner cannot be said to have been infringed, I hold that the civil revision petition is not maintainable. That apart, it is also seen that the first respondent is a person, who is his 90^s. The revision petitioners are his own children. When this Court posed a specific question to the counsel for the revision petitioners as to whether they have any material to show that the first respondent is having the means to pay the Court fee, no positive answer was received from the revision petitioners to this question. Therefore, this Court is of the view that the Court below was justified in granting leave to the first respondent to sue as indigent person.

6.Finding no merits in the civil revision petition, the civil revision petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

1. The Additional District Judge, Virudhunagar.

2. The District Collector,
Virudhunagar.

+1cc to Mr.P.Santhosh Kumar , Advocate SR.No.77514

+1cc to Mr.I.Velpradeep, Advocate SR.No.77483

Rmk

MK/SKN/SAR 3/31.08.2018/3P/5C

C.R.P (MD) (PD) .No.2307 of 2017

and

C.M.P (MD) .No.11176 of 2017

06.08.2018