



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.08.2018
CORAM

THE HON'BLE MS.JUSTICE V.M.VELUMANI

CMA(MD) No.615 of 2018

M.Sakubar Sathik

... Appellant/Petitioner/Plaintiff

-Vs-

1.Ramakrishnan

2.Sathiyamoorthi

... Respondents/Respondents/Defendants

PRAYER: Civil Miscellaneous Appeal - filed under Order 43 Rule 1 (C) of Civil Procedure Code against the order dated 23.01.2018 made in Indigent O.P.NO.4 of 2015 in O.S. No. Unnumbered of 2015 on the file of the Principal District Judge, Tiruchirappalli.

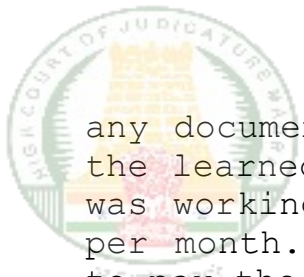
For Appellant : Mr.T.Vadivelan

J U D G M E N T

The appellant is the petitioner in Indigent O.P. No.4 of 2015. He presented the plaint for declaration of sale deed dated 10.09.2014 bearing document No.5591/2014 executed by the first respondent in favour of the second respondent as null and void and for permanent injunction restraining the second respondent from encumbering the suit property. The appellant has filed the said Indigent O.P.No.4 of 2015 seeking to permit him to file the suit without paying the court fee due on the plaint by adjudging him as indigent person.

2. The first and second respondents filed separate counter affidavits and denied various averments made by the appellant on merits. The respondents contended that the appellant has sufficient means to pay the court fee. The second respondent contended that the appellant borrowed huge amount from the first respondent and executed power of attorney in favour of the first respondent. The respondents further contended that the appellant's two sons were carrying on business in foreign country and after coming to India, they are carrying on business in India. The appellant is associating with the said business along with his sons and earning huge amount. He has sufficient means to pay the court fee and prayed for dismissal of the Original Petition.

3. Before the learned Judge, the appellant examined himself as P.W.1 and the respondents themselves examined as R.W.1 and R.W.2 and both the appellants and the respondents did not mark



any documents. At the time of arguments before the learned Judge, the learned counsel for the appellant contended that the appellant was working as a Coolie in a hotel and earning a sum of Rs.4000/- per month. Apart from that, the appellant has no income or means to pay the court fee.

WEB COPY

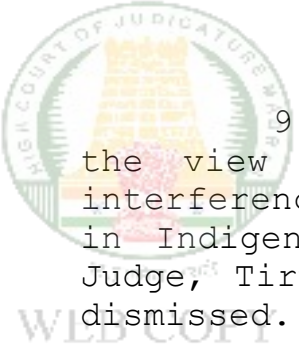
4. The learned Judge, considering the fact that the appellant did not state anything in the petition that he is working as a Coolie in a Hotel and he also did not mention this fact in the proof affidavit and other materials on record, rejected the contention of the appellant that he is an indigent person and directed the appellant to pay the court fee of Rs.2,99,500.50/- on or before 22.02.2018.

5. Against the said order, the appellant has come out with the present appeal.

6. The learned counsel for the appellant contended that the trial Judge erred in holding that the appellant has means to pay the court fee. The appellant has stated in the petition that he may be permitted to sue the respondent as an indigent person. The learned Judge erred in holding that the appellant did not implead the District Collector, who is the competent person to state whether the appellant has any immovable property or means to pay the court fee. The learned Judge erred in accepting the contention of the respondent that the appellant is a rich man and his sons are having lot of money and doing business and the appellant has failed to prove the fact and deposed before the court that he is an indigent person and he is working as Coolie in a hotel.

7. Heard the learned counsel for the appellant and perused the materials available on record.

8. From the statement in the Original Petition, it is seen that except stating that the petitioner may be permitted to sue the respondent as an indigent person, the appellant has not made any other averments. Even in the proof affidavit, the appellant has not stated that he is working as Coolie in a Hotel. Only at the time of argument before the learned Judge, the learned counsel for the appellant made such statement. Even then the appellant has not furnished any details where he is working and the name of the hotel and he has not produced any salary certificate. The appellant has also not denied that his sons are having business and he is actively involved in the said business and earning money. The learned Judge considered these facts and has rejected the claim of the appellant by holding that the appellant has not filed any proof that he is an indigent person and directed him to pay the court fee.



9. Considering the above stated facts, this Court is of the view that there is no reason or circumstance warranting interference by this Court with the order dated 23.01.2018 passed in Indigent O.P.No.4 of 2015 by the learned Principal District Judge, Tiruchirappalli. Hence, this Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Principal District Judge,
Tiruchirappalli.
2. The Record Keeper,
V.R. Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.T.Vadivelan, Advocate SR.No.77809

Cm

MK/SKN/SAR 1/04.09.2018/3P/5C

CMA (MD) No.615 of 2018
09.08.2018