

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.11.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.3609 of 2012 and
M.P.No.1 of 2012

Ramachandran

... Appellant /Plaintiff

Vs.

1.Madurai Veeran
2.Neimur Rahman
3.Mohammed Kauser

... Respondents/Defendants 1 to 3

Civil Miscellaneous Appeal is filed under Section 104 r/w Order 43 Rule (1) of Civil Procedure Code to set aside the order and decree dated 14.09.2012 made in Pauper O.P.No.50 of 2011 on the file of learned Principal District Judge, Puducherry and permit the appellant to institute the suit as indigent person.

For Appellant : Mr.M.Venkadeshnan

For Respondents : Mr.Prakash Adiapadam for R1
Mr.Mutharasu for R2 and R3

J U D G M E N T

The appellant has filed the present Civil Miscellaneous Appeal under under Section 104 r/w Order 43 Rule (1) of Civil Procedure Code to set aside the order and decree dated 14.09.2012 made in O.P.No.50 of 2011 on the file of learned Principal District Judge, Puducherry and permit the appellant to institute the suit as indigent person.

2. The case of the appellant is that the suit property originally belonged to one Appadurai and it was purchased by Subrayan, who is the grand father of the appellant, by way of a sale deed dated 08.03.1933. The said Subrayan, who has been in possession and enjoyment of the suit property, died in the year 1950 leaving behind the father of the appellant, viz., Kilandi and his sister, Anandayee, as his legal heirs. Thereafter, the said Kilandi died in the year 1972 leaving behind his sister,

viz., Anandayee and the appellant herein, as his legal heirs. In consequence, during March, 1999, in order to earn for livelihood, the appellant has shifted to Kottakarai Village, as it provides easy access to working places. The appellant was working as mason and doing construction activities leaving behind his aunt, Anandayee to continue to be in possession and enjoyment of the suit property.

3. It is the further case of the appellant that the said Anandayee died unmarried on 02.04.2000 leaving behind the appellant as sole legal heir. The 1st respondent had forcibly trespassed and occupied the suit property in May, 2006 claiming that he has purchased the property from the said Anandayee by a deed dated 20.10.1999 in favour of him. However, the appellant denied the truthness, correctness, genuineness, other recitals, attestation and signature of Anandayee in the alleged said sale deed. The appellant also specifically stated that Anandayee, sister of his father, never executed any sale deed. While registering the alleged forged sale deed dated 20.10.1999, the 1st respondent had fabricated forged document fraudulently and misrepresented a third party woman as Anandayee before the Registration Authority. The appellant also states that title was not at all conveyed to the 1st respondent and even the said Anandayee was having title only in respect of undivided 1/2 share in the suit property and that the alleged sale deed will not bind the another 1/2 share of the appellant herein.

4. According to the appellant, again the 1st respondent sold the property on 21.12.2000 by way of sale deed to the 2nd respondent. The said sale deed was executed by the 1st respondent, who does not have any right, title or interest in the suit property. The appellant has filed a suit before the II Additional District Munsif Court, Pondicherry in O.S.No.304 of 2002 and the said court has passed an order stating that the appellant has to present the same before the court having proper pecuniary limits. The appellant has also preferred a criminal complaint against the 1st and 2nd respondents for the preparation of forged and fraudulent sale deed dated 20.10.1999, in order to usurp the suit property. A charge sheet has been laid by the authority in C.C.No.32 of 2007. The finger print expert has clearly stated that the signature in the alleged sale deed dated 22.10.1999 is not identical with the admitted signature of Anandayee, sister of appellant's father, which clearly confirms the fact that the said Anandayee has never executed any sale deed in favour of the 1st respondent.

5. Further, the appellant states that the 2nd respondent with an intent to create multiplicity of proceedings seems to

have created a deed and styled as Settlement Deed dated 26.10.2005 and claims that the 3rd respondent, who is the elder brother of the 2nd respondent has been in possession and enjoyment of the suit property. The appellant specifically stated that the alleged sale deed dated 21.12.2000 executed in favour of the 2nd respondent by the 1st respondent and the settlement deed dated 26.10.2005 are null and void, because it was executed by the persons, who does not have any title to the suit property and therefore, filed the suit for declaration to declare that the appellant is the absolute owner of the schedule mentioned property and to permit him to sue as an indigent person. It is also the claim of the appellant that since he does not own any movable or immovable property, except A Schedule mentioned property, he is struggling hard to eek his livelihood and has not entered into any sale agreement with any of the property for the past six months, he is a pauper and therefore, prays to fix the court fee of Rs.1/- under Schedule II Article 11 of the Pondicherry Court Fees and Suits Valuation Act, 1972.

6. Per contra, it is the case of the respondents that the suit filed by the appellant to permit him to sue as an indigent person is not at all maintainable both in law and facts, because the appellant has sufficient means other than the subject property and the suit itself is barred by limitation, as such, the allegations in the application shows the same. The sale deed is of the year 1999 and the same is sought to be declared as null and void in the year 2011 without asking to set aside the same. Further, even assuming if a sale is null and void, then, it does not require any decree of court, whereas a leave of court may be needed only if the sale deed is voidable in nature and such suit should be filed within three years.

7. It is the further case of the respondents that the appellant is in possession of other movable and immovable properties and the same has not been purposely disclosed in the petition and that the application was not properly framed and presented in the manner prescribed by Rules 2 and 3 of Order 33 of Code of Civil Procedure. Also, the valuation of the suit and the provisions of the Pondicherry Court Fees and Suit Valuation Act, 1972 has not been properly made by the appellant and hence prays to dismiss the petition filed by the appellant.

8. The learned Principal District Judge, Puducherry after perusing the averments, counter and the deposition of the appellant, has dismissed the Pauper O.P.No.50 of 2011 and the relevant paragraph is extracted hereunder for useful reference:

'8..... In the present case, the petitioner failed to depose that he never disposed any property two months

prior to the presentation of the petition, never entered into an agreement with reference to the subject matter of the proposed suit in which any other person has obtained interest in such subject matter and also never deposed that any person has entered into an agreement with him to finance the litigation. Furthermore, during evidence, the petitioner failed to depose that he has not possessed sufficient properties to pay the court fees. Therefore, since the petitioner failed to comply the mandates of Order 33 Rule 5 C.P.C., and further since the petitioner failed to depose that he has got no means to pay the court fees, this court is of the considered view, the petitioner is not entitled for the relief as claimed and thus, I answer the point accordingly.'

aggrieved against the order and decree dated 14.09.2012 made in O.P.No.50 of 2011, the appellant has preferred the present Civil Miscellaneous Appeal.

9. The learned counsel for the appellant submitted that the lower court failed to see the provisions of Order 33 Rule 2 of CPC, which are only directory in nature and not mandatory. Therefore, the order passed by the court below is liable to be set aside and Order 33 Rule 2 of CPC enumerates the procedure for filing suit by indigent person as 'Every Application for permission to sue as an indigent Person shall contain the particulars required in regard to plaint in suit a schedule of any moveable or immovable property belonging to the applicant with the estimated value thereof shall be annexed thereto, and it shall be signed and verified in the manner prescribed for signing and verification of pleading' and the appellant has filed an application to sue as indigent person, the particulars have been verified and signed by him, hence the dismissal of the same is liable to be set aside.

10. The learned counsel for the appellant contends that the court below while ordering notice to the respondents had failed to issue notice to the Government as contemplated under Order XXXVI Rule 6 of CPC, hence the enquiry conducted by the learned Judge regarding enquiry into the Pauperism of the appellant is vitiated and therefore, subsequent order passed dismissing the application to institute the suit as indigent person, is liable to be set aside.

11. It is represented on behalf of the appellant that he does not own any movable or immovable property, except Suit 'A' schedule mentioned property and he has not entered into any sale agreement with any of the person for the past six months and he is pauper, therefore, the finding of the court below that the

appellant failed to depose that he never disposed any property two months prior to the prosecution of the petition, is liable to be rejected because the pleadings and evidence has to be taken in total to decide the case.

12. The learned counsel for the appellant contended that the court below before dismissing the application failed to take into consideration all the Rules of procedure and the language employed by the draftsman, which may be liberal or stringent, but the fact remains that the object or prescribing procedure is to advance the cause of justice, hence on the said principle, the application filed by the appellant to institute the suit as indigent person, ought to be allowed and thereby pleaded to set aside the order and decree dated 14.09.2012 made in O.P.No.50 of 2012.

13. The learned counsel for the appellant, in support of his case, has relied on the following Judgments:

(i) Manoharan Vs. Sivarajan and others reported in (2014) 4 Supreme Court Cases 163.

(ii) Kamu alias Kamala Ammal and Others Vs. M.Manikandan (Minor) and another reported in AIR 1998 Madras 33.

(iii) Ekbal-unnis Begum Vs. Mir Ahmed Ali Khan reported in AIR 1954 Hyderabad 240.

(iv) Bommineni Laxmi Devamma V. Bommineni Konappa reported in AIR 1990 Andhrapradesh 115.

14. The counsel for the appellant submitted that the failure to comply with the requirements of Order 33 Rule 5 is only a procedure of directory and not mandatory. To show the same, he has relied on the Judgment of Andhrapradesh High Court reported in AIR 1990 Andhrapradesh 115 [Bommineni Laxmi Devamma V. Bommineni Konappa] wherein the failure to comply with any one of these would result in rejection of the application under Order 33 Rule 5, these requirements relate to pleadings and cannot be treated as fatal. If the application does not conform to Rules 2 and 3, an opportunity can be given to rectify the defects, if any and Order 33, Rule 5 is only a procedure, which is a directory and not a mandatory principle. While Rule 2 relates to pleadings, Rule 3 speaks of presentation. Sub-Rule (a) of Rule 5 says that where it is not framed and presented in the manner prescribed by Rules 2 and 3, the application to sue as an indigent person shall be rejected and sub-Rule (a) of Rule 5 has nothing to do with the merits of the case. It only deals with the format and presentation of the application. But does not empower the rejection of the application on the ground that the particulars mentioned in the plaint are later found to be incorrect or for non-disclosure of the properties possessed by the applicant. The only question for consideration under Order

33 is whether the plaintiff has means to pay the court fees. Omission to mention some properties possessed by the applicant will not amount to suppression. Even assuming that the petitioner has not disclosed anything in his petition for granting permission to sue as *informa pauperis* while deciding the same, the court has to consider only the indigence of the petitioner, any other objection or merits of the case has to be considered only at the time of trial and not at the stage of preliminary.

15. The learned counsel for the appellant also submitted that in support of the Hon'ble Apex Judgment reported in (2014) 4 Supreme Court Cases 163 [Manoharan V. Sivarajan and others] contented that the expression of sufficient cause should therefore be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining the delay, this is on a different footing, regarding the delay in filing the court fee, wherein in that case, where the appellant has sought for extension of time for remitting the balance court fee was rejected, consequent to which, the original suit was dismissed, was appealed before the Supreme Court and the Supreme Court has held that rejection of appellant's application by court of sub-Judge for extension of time for remitting balance court fee, which was unable to pay due to financial constraints was held erroneous and was set aside, but, here, in this case, the petitioner even though has not filed the suit as *informa pauperis* the same was rejected on the ground that he has not fulfilled the conditions stated.

16. Heard the learned counsel for the respondents on the submissions of the learned counsel for the appellant. The learned counsel for the respondents relied on the Judgment of Hon'ble Apex Court in Jamila Begum (d) Thr. Lrs V. Shami Mohd. (D) Thr. Lrs and Another in Civil Appeal No.1007 of 2013.

17. It is seen from the records that the appellant herein has filed the plaint in O.P.No.50 in the year 2011 under Order 33 Rule 1 read with Order 7 Rule 1 of C.P.C., seeking the below mentioned prayer:

a. To permit the petitioner / plaintiff to sue the suit in *informa pauper*;

b. To declare that the petitioner / plaintiff is the absolute owner of the schedule mentioned property;

c. To declare that the sale deed dated 20.10.1999 in document no.5263/99, registered before the District Registrar, Pondicherry is null and void, abinitio and illegal one;

d. To declare that the sale deed dated, 21.12.2000 under document no.5469 of 2000 registered before the District

Registrar, Pondicherry is null and void, ab-initio and unenforceable one in accordance with law;

e. To declare that the registered settlement deed dated 26.10.2005 under document no.5389/2005 registered before the District Registrar, Pondicherry as null and void, abinitio and unenforceable one in accordance with law;

f) to award the costs of this petition.

the court below after considering the averments has conducted an enquiry and in cross examination of P.W.1, appellant, he has stated that the annual income of the family is Rs.15,000/- [as per Ex.P.2, Death Certificate of appellant's father]. The appellant has also submitted that he does not have any income, but, no documents have been produced before this Court from the revenue authorities to show that he does not have any proper or sufficient income to declare him as pauper. The learned District Judge, Puducherry, after hearing on the either side has considered the averments and dismissed the petition to sue him as pauper.

18. On the perusal of said order, it is seen that the appellant was examined as P.W.1 and in the absence of he deposing what is contemplated under Order 33 Rule 5 CPC, the court below has come to a conclusion to dismiss the petition and accordingly, dismissed the same and the appropriate paragraphs are extracted hereunder:-

'8. Point: To prove the plea of the petitioner, the petitioner is examined as P.W.1. During evidence P.W.1 never deposed about the following factors as contemplated under Order 33 Rule 5 C.P.C:

(i) Where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue a an indigent person.

(ii) Where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

(iii) Where any other person has entered into an agreement with him to finance the litigation.

(iv) never deposed about the property owned by him.

(v) Never deposed that he is incapable of paying the court fees.

Order 33 Rule C.P.C., Manifest if the application is not framed in accordance with Order 33 Rule C.P.C., the application can be rejected. In the present case, the petitioner failed to depose that he never disposed any property two months prior to the presentation of the petition, never entered into an agreement with reference to the subject matter of the proposed suit in

which any other person has obtained interest in such subject matter and also never deposed that any person has entered into an agreement with him to finance the litigation. Furthermore, during evidence, the petitioner failed to depose that he has not possessed sufficient properties to pay the court fees and also failed to depose that he has got sufficient properties to pay the court fees. Therefore, since the petitioner failed to comply the mandates of Order 33 Rule 5 C.P.C., and further since the petitioner failed to depose that he has got no means to pay the court fees, this court is of the considered view, the petitioner is not entitled for the relief as claimed and thus, I answer the point accordingly.'

19. As the appellant failed to depose that he never disposed of any property, as stated supra and failed to prove that he does not possess sufficient means and no other properties for him to pay the court fees, the Court has come to a preliminary conclusion itself that the appellant is not entitled for granting the said relief. The respondents / defendants, who had filed their counter in the said petition, has raised preliminary objection stating that the suit itself is barred by limitation, since the sale deed is of the year 1999, which has challenged only in the year 2011, to be declared as null and void, however, without asking to set aside the same. Even assuming that the sale is null and void, then, it does not require any decree of court, whereas, a leave of court may be needed if the sale deed is beyond three years and the prayer in the suit is barred by limitation.

20. From the perusal of the records, it is seen that the appellant has filed a Suit in the year 2002 and the same was numbered as O.S.No.304 of 2002 on the file of II Additional District Munsif, Pondicherry and the same was returned to be presented before the concerned court, which is having proper pecuniary jurisdiction. The appellant keeping quiet from the year 2002, has filed the same only in the year 2011 to be sued in the capacity of informa pauperies. The alleged sale is of the year 1999 and from the year 1999, the limitation expires in year 2002 to challenge the same. Even though he has tried to file it in the year 2002, but had not re-presented the same before the concerned appropriate court and waited nearly for nine years and then, filed it before this Court without any valid reason, has to be dismissed.

21. Even assuming that it is only a directory and not mandatory provisions, it could be seen that the appellant once had filed a suit during 2002 which was returned and not at all

represented within the time and it is seen that the cause of action arose in the year 1999 for the said suit and the period of limitation is limited to the year 2002 [three years] and he cannot continue the same cause of action in the year 2011 by filing a separate Pauper .O.P. in the guise of seeking for granting leave to file it as a informa pauperies.

22. That apart, even assuming that if the appellant is ready to pay the court fee and contest the case at present, this Court cannot grant the same, because third parties interest have been crept-in in the year 1999 -2000 and at this length of the time, it will not be just and proper for this Court to consider the plea of the appellant to condone the delay, pay the court fee and contest the case afresh, as the limitation bars the same. The appellant is not vigilant in re-presenting the same within the time and the filing of the present suit is an after thought due to the reasons best known to him.

23. In view of the above, this appeal deserves to be dismissed on the ground of failure to contest the suit under Order 33 Rule 5 and also on the ground of latches on the part of the appellant, as he has not represented the suit when it was returned within the limitation period and it is barred by limitation.

24. In fine, the present Civil Miscellaneous Appeal is dismissed and the order dated 14.09.2012 passed in Pauper O.P.No.50 of 2011 by the learned Principal District Judge, Puducherry does not require any interference in the hands of this Court and the same stands confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Principal District Judge,
Puducherry.

Copy to:

The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.Prakash Adiapadam, Advocate SR.91699
+1cc to Mr.M.Venkadeshan, Advocate SR.91713

C.M.A.No.3609 of 2012 and
M.P.No.1 of 2012

RK(CO)
CB(11/03/2020)