

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.PONGIAPPAN**

C.R.P.NPD.No.4487 of 2014
& M.P.No.1 of 2014

Thanappan

.... Petitioner

Vs

1. P.Subramanian
2. Meena

.... Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the fair and decretal order dated 20.03.2014 passed in I.A.No.98 of 2013 in unnumbered Appeal on the file of the Principal District Court, Cuddalore.

For Petitioner : Mr.P.Mani

For Respondents

For R1 : Mrs.G.Sumitra

For Mr.I.Abrar Md. Abdullah

For R2 : No appearance

ORDER

Aggrieved over the order dated 20.03.2014 passed in I.A.No.98 of 2013 in unnumbered Appeal by the learned Principal District Judge, Cuddalore, the petitioner, who is the appellant in the above referred appeal, filed the present Civil Revision Petition.

2. Originally, the first respondent in this Civil Revision Petition filed a suit as against the petitioner and the second respondent herein in O.S.No.111 of 2009 on the file of the learned II Additional Subordinate Judge, Cuddalore, and sought for the reliefs of declaration, recovery of possession and for mandatory injunction. The learned Subordinate Judge, Cuddalore, by a judgement dated 15.03.2013 allowed the said suit and also decreed the suit in favour of the first respondent i.e., P.Subramanian. Aggrieved over the said findings, the petitioner herein preferred an appeal along with an application in I.A.No.98 of 2013 under Order 33 Rule 1 of C.P.C., with a prayer to declare him as an indigent person to file the appeal, since he is not able to pay the Court fees. The learned Principal District Judge, Cuddalore, after affording opportunity to either side, by an order dated 20.03.2014 dismissed the said application filed by the petitioner. Aggrieved over the said findings, the petitioner is before this Court with this Civil Revision Petition.

3. Today, when this petition is taken up for hearing both the learned counsel appearing for the petitioner and the first respondent are present.

4. The learned counsel appearing for the petitioner would contend that since the petitioner is a cooly worker under one contractor, he is not able to pay the Court fee due for filing an appeal.

5. On the other hand, the learned counsel appearing for the first respondent would contend that at the time of giving evidence before the Subordinate Court, Cuddalore, the petitioner as a D.W.1, has admitted that he is having money which derived from the contract work. Further he has admitted that proof is also available to prove that the petitioner is doing contract work. Considering all the records and evidence, the learned Principal District Judge, Cuddalore, dismissed the petition filed by the petitioner. Hence interference is not necessary in the finding arrived in the impugned order.

6. The submissions made by the learned counsels on either side are considered.

7. It is true that during the time of giving evidence as D.W.1, the petitioner himself has admitted that he is doing civil contract work. He has subsequently stated that he is having the proof to prove the same.

In this connection, it is relevant to see the Order XXXIII Rule 1 of the Civil Procedure Code, which reads as follows :-

"R1. Suits may be instituted by indigent person. Subject to the following provisions, any suit may be instituted by an indigent person.

Explanation I- A person is an indigent person,-

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit."

8. According to the said provisions, the object is to enable the persons who are too poor to pay Court fee to institute suit, without payment of it. A party who applies for exemption from payment of Court fees on the ground of indigency will have to satisfy the Court about one crucial ingredient alone viz., that the party does not have the

capacity to pay the Court fees. It is not sufficient for the party to make a bald statement to this effect, it is a requirement of law that the statement has to be substantiated to the satisfaction of the Court.

9. Now the point that has to be decided in this case is whether the petitioner is an indigent or not?

10. It is true that in the order passed by the learned Principal District Judge, Cuddalore, the learned Judge incorporated the entire evidence given by the petitioner before the trial Court, in which the petitioner has admitted that he is having wealth to pay the Court fee. It cannot be said that the civil contractors have no money for paying the Court fee. Even though the concerned District Collector is the responsible person for giving details in respect of the assets possessed by the petitioner, no proof has been filed before the Court below to prove the same. Further the own admission made by the petitioner himself is against the proposition laid down under the law.

11. Therefore, this Court is not inclined to interfere with the order dated 20.03.2014 passed by the learned Principal District Judge,

Cuddalore, in I.A.No.98 of 2013 in unnumbered Appeal. However, the petitioner is directed to pay the required Court fee within a period of three weeks from the date of the receipt of a copy of this Order and on such payment, the learned Principal District Judge, Cuddalore, is directed to number the appeal, if it is otherwise in order, and proceed the case in accordance with law.

12. With the above directions, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

01.10.2019

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

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To

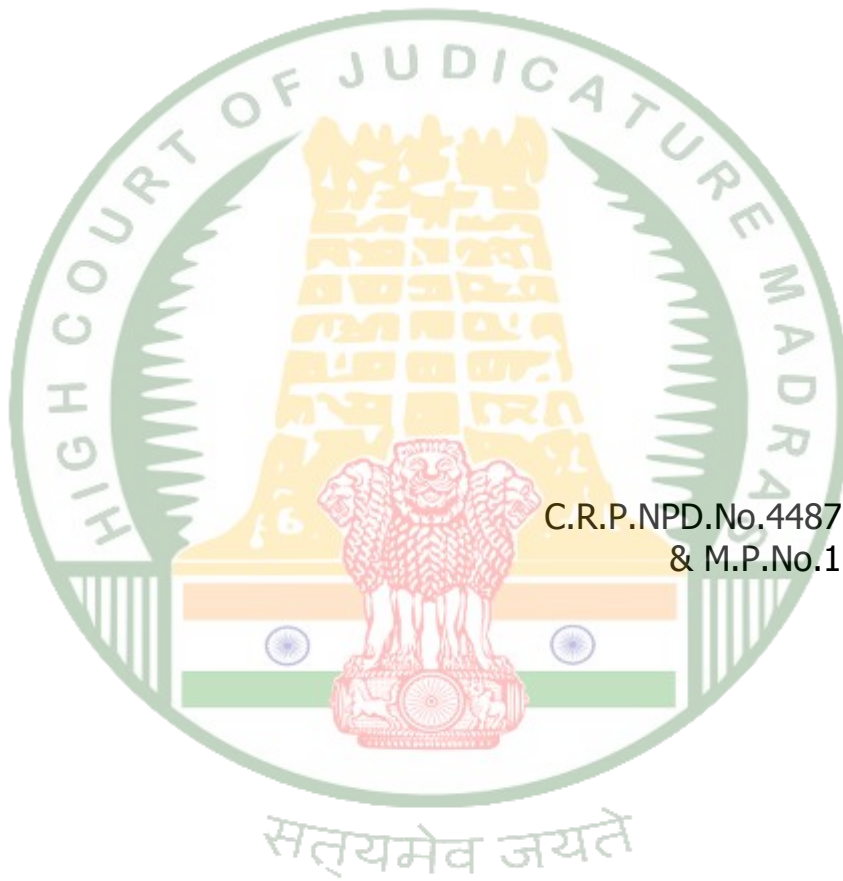
The Principal District Court,
Cuddalore.

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