



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.01.2019
DELIVERED ON : 26.03.2019

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THE HONOURABLE MRS. JUSTICE J. NISHA BANU

C.M.A (MD) No. 1126 of 2018

1. K. Balasundaram
2. K. Senthilkumar
3. K. Ponraj
4. K. Ananthakumar ... Appellants/Petitioners

Vs

1. L. Vadivel Nadar ... 1st respondent/respondent
2. Government of Tamilnadu,
rep. by District collector,
Tuticorin, Collector Office,
Tuticorin

... 2nd Respondent/Respondent

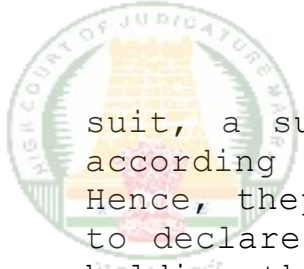
PRAYER:- Civil Miscellaneous Appeal is filed under Section 104 read with Order XLIII Rule 1 (na) of C.P.C to set aside fair and decreetal order dated 19.10.2016 in P.O.P.No.158 of 2014 made on the file of Principal District Court, Tuticorin.

For Appellants : Mr. B. Rajesh Saravanan
For R.1 : Mr. T. Antony Arul Raj
For R.2 : No appearance

J U D G M E N T

The appellant has filed this Civil Miscellaneous Appeal to set aside the fair and decreetal order dated 19.10.2016 made in P.O.P.No.158 of 2014 on the file of Principal District Court, Tuticorin.

2. The facts of the case are that the appellants herein filed a suit against the first respondent to cancel the deed executed by them and to declare that the suit property belongs to them with consequential permanent injunction. For the purpose of filing the



suit, a sum of Rs.1,29,450/- were to be paid as court fee, and according to the appellants, they are unable to pay the same. Hence, they filed Pauper original petition in P.O.P.No.158 of 2014 to declare them as pauper, which was dismissed by the Court below holding that they have sufficient means to pay. Challenging the said order, the appellants are before this Court with the present Civil Miscellaneous Appeal.

3.The learned counsel appearing for the appellants would submit that without appreciating the evidence on record in its proper perspective, the Court below has wrongly dismissed the petition. While dismissing the petition, the Court below had failed to consider that the Government of Tamil Nadu/2nd respondent did not object to the petition. According to the petitioner, the government alone is competent to say whether the appellants are indigent persons or not, for which, the appellants relied on a judgment reported in **AIR 1988 Kerala 267, A.Prabhakaran Nair Vs K.P.Keelakanthan Pillai**. He also relied upon yet another judgment reported in **AIR 2000 Rajasthan 32, Smt.Manjulata Vs V.Sidhkaran**. To sum up, he would submit that the Court fee is a matter between the appellants and the Court and the contesting party has no role to play. Hence, he prays for allowing this appeal.

4.*Per contra*, the learned counsel for the first respondent contented that it is the duty of the contesting respondent to bring before the court the real financial capacity of the appellants and the Court has to convince itself that the person who claims is really an indigent person. In the case on hand, the first respondent has brought to the knowledge of the court with sufficient materials to prove that the appellants have means to pay and therefore, prayed for dismissal of the appeal.

5.There is no appearance on behalf of the second respondent.

6.Heard the learned counsel appearing on behalf of the appellant and the first respondent and perused the materials available on record including the judgments cited by the appellants.

7.There are four appellants in this Civil Miscellaneous Appeal and claimed they are indigent persons and pleaded they did not have sufficient means to pay the court fee. It is not in dispute that the second appellant and the third appellant are working in government organisations. In the plaint, it has been pleaded that the third appellant did not have any work, while, he admittedly, works as conductor in the Tamil Nadu State Transport Corporation and thus he did not come with clean hands before the court. Likewise, the other two appellants, namely, the first appellant is doing business and the fourth appellant is working as Professor in



a private College. Perusal of record also shows, except the second appellant, the other three appellants have not come forward to substantiate the fact that they are indigent persons and they did not rebut the evidence adduced by the contesting party. It is true that the government has not contested the case against the appellants, but, it does not mean that the contesting respondent cannot assist the court to come to a fair conclusion. If the court decides that the appellants are indigent persons, the respondents will not have any say that they have a right to appeal. It is the revenue of the government and the Court should ensure that the concession extended by the government should not be misused. The court fee of each appellants works out to Rs.31,226/- which can be easily arranged by the appellants. In my considered opinion, the reasoning recorded by the court below need not be interfered with as the appellants had not come before this Court with clean hands. In the light of the factual position of the matter, this Court is of the considered view that no interference is required at the hands of this Court to set aside the reasoned impugned judgment passed by the Court below. The judgments relied on by the appellants will not support their case.

8. In the result, this civil miscellaneous appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (ADI)

// True Copy //

Sub Assistant Registrar (CS)

TO
The Principal District Court,
Tuticorin.

COPY TO
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 cc to Mr.T.Antony Arul Raj , Advocate SR.No.56610

order made in
C.M.A (MD) No.1126 of 2018
26.03.2019

KM/ (11.04.2019) 3P 5C