

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 118 of 2017****Reserved on 11.12.2020****Pronounced on 15.12.2020**

1. Sewanti Bai, W/o Digambar Prasad, aged about 50 years, Caste – Kaser, R/o Tapkara, Tahsil – Farsabahar, P.S. - Tapkara, Distt. Jashpur (C.G.)
2. Satyanarayan Sao, S/o Digambar Sao, Caste – Kaser, aged about 29 years, R/o Tapkara, Tahsil – Farsabahar, P.S. Tapkara, District – Jashpur (C.G.)

---- Appellant/Plaintiffs**Versus**

1. Fuleshwari Devi, Wd/o Late Lalit Prasad Choudhary, aged about 55 years,
2. Basant Kumar Choudhary, aged about 35 years, S/o Late Lalit Prasad Choudhary,

Both are R/o Village Tapkara, Tahsil Farsabahar, District – Jashpur (C.G.)

3. Jayanti Choudhary, aged about 38 years, D/o Late Lalit Prasad Choudhary, R/o Village Badakmal, P.S. Tahsil & District – Sundargarh (Orissa)
4. Hemanti Choudhary, aged about 33 years, D/o Late Lalit Prasad Choudhary, R/o Village Duldula, Police out post Duldula, P.S. Jainagar, District Jashpur (C.G.)
5. Krishna Prasad Jaiswal, aged about 62 years, S/o Kunwar Sao, Caste – Malar.
6. Bhola Jaiswal, aged about 32 years, S/o Krishna Prasad Jaiswal, Caste – Malar.
7. Sujeet Jaiswal, aged about 34 years, S/o Krishna Prasad Jaiswal,

Respondents No. 5 to 7 are R/o Village Tapkara, Tahsil – Farsabahar, P.S. Tapkara, District – Jashpur (C.G.)

---- Respondents/Defendants

For Appellants

: Shri V.K.Pandey appears along with Ms.
K.Radhika, Advocate

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V. Order

1. Heard on admission.
2. This Appeal has been preferred by the Plaintiffs under Order 43 Rule 1 (na) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') questioning the propriety of the order dated 02.05.2017 passed in Misc. Civil Suit No.13/2014 (CIS No. 13/2014), whereby the learned trial Court has refused them to sue as an indigent person, while rejecting their application filed under Order 33 Rule 2, 3 & 5 of CPC.
3. From perusal of the record, it appears that a suit for declaration of title and injunction has been made by the Plaintiffs seeking declaration to the effect that the registered deed of sale dated 01.05.2013 executed in favour of Defendant No.1 – Lalit Prasad Choudhary (since deceased now represented by his legal representatives – Fuleshwari Devi and others) with regard to the property in question bearing Kh.No. 148/4 admeasuring 0.040 hectares constructed with house of village Tapkara Tahsil Farsabahar, Dist. Jashpur, be declared as null and void and not binding upon them. *Ad valorem* court fee of Rs.42,000/- was required to be paid in the suit and since the Plaintiffs have not possessed of sufficient means and were not capable to pay the said court fee prescribed by law, an application enumerated under Order 33 Rule 2, 3 & 5 of CPC seeking to institute the same as an indigent person was made. It is stated therein that Plaintiff Sewanti Bai is a house-wife while her son Satyanarayan is a contingent paid driver and have not possessed any kind of movable or immovable properties.
4. Defendants have contested the aforesaid application and the trial Court, after holding an enquiry, arrived at a conclusion that the Plaintiffs are running a

poultry form and Plaintiff Satyanarayan used to earn Rs.4,000/- per month while engaging himself as a driver. It was observed further that the income certificate (Ex.P.1) for the year 2013-14 could not be established by the Plaintiffs for non-examination of its issuing authority and in consequence, held that the Plaintiffs have possessed the sufficient means and were not entitled to sue as an indigent person and accordingly, the application was rejected.

5. It appears that while moving the said application under the said provision seeking to sue as an indigent person, the Plaintiffs have failed to disclose their movable or immovable property, however, a schedule in this regard should have been attached therein as required under Rule 2 of Order 33 of CPC. The said provision is relevant for the purpose reads as under:-

Order 33
[SUITS BY INDIGENT PERSONS]

2. Contents of application. - Every application for permission to sue as [an indigent person] shall contain the particulars required in regard to plaints in suits: a schedule of any movable 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 the signing and verification of pleadings.

6. According to the aforesaid provision, it is thus evident that a person, who seeks the indulgence of the Court to sue as an indigent person, must be clear in the disclosure of his assets with regard to movable as well as immovable properties belonging to him. In the present case, as reflected from the said application, the Plaintiffs have failed even to annexe the schedule of any movable or immovable properties of theirs. Moreover, it was found in the said enquiry as conducted by the Court below in exercise of its power enumerated under Rule 1A of Order 33 that the Plaintiffs have possessed sufficient means and were capable to pay the fee, as required by law to be paid in the suit.

7. In view of above, I do not find any substance in this appeal, which deserves to be and is hereby dismissed. No order as to costs.

Sd/-
(Sanjay S. Agrawal)
Judge