

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4226 of 2011

and

M.P.No.1 of 2011

R.Gopinath

.. Petitioner

Vs.

1.R.Shanmugam

2.The District Collector,
Tiruppur District.

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 23.06.2011 made in P.O.P.No.145 of 2010 on the file of Principal District Court, Coimbatore.

For Petitioner : Mr.K.VenkataSubban
for Ms.Sarvabhauman Associates

For R1 : No appearance

For R2 : Mr.A.Ansar,
Government Advocate (C.S)

ORDER

The matter is heard through Video Conferencing.

2.This Civil Revision Petition is filed to set aside the fair and decreetal order dated 23.06.2011 made in P.O.P.No.145 of 2010 on the file of Principal District Court, Coimbatore.

3.The petitioner is the 1st respondent in P.O.P.No.145 of 2010 filed by the 1st respondent for declaring himself as pauper and to proceed the suit without paying Court fee. The 1st respondent sought permission to sue as indigent person for declaration of the sale deed dated 31.12.2009 executed by him in favour of the petitioner as null and void. According to the 1st respondent, he has no means to pay the Court fee and he is not carrying on any business, owning any property and has no income. On the other hand, the petitioner filed counter and listed out various properties owned by the 1st respondent and also business carried on by him and contended that 1st respondent has sufficient means to pay the Court fee. Before the learned Judge, the 1st respondent examined himself as P.W.1 and marked one document as Ex.P1. The petitioner examined himself as R.W.1, one

M.Soundararajan, Manager of State Bank of India, Tiruppur was examined as R.W.2 and four documents were marked as Exs.R1 to R4. The learned Judge allowed the P.O.P.No.145 of 2010 holding that the petitioner failed to prove that the 1st respondent has means to pay the Court fee.

4.Against the said order dated 23.06.2011 made in P.O.P.No.145 of 2010, the petitioner has come out with the present Civil Revision Petition.

5.The learned counsel appearing for the petitioner made various contentions on merits and also contended that the 1st respondent is possessing various properties, carrying on business and he has sufficient means to pay the Court fee. The learned Judge allowed the P.O.P without obtaining report from the 2nd respondent/District Collector and without enquiring into the means of indigent person, thereby committed irregularity and prayed for allowing the Civil Revision Petition.

6.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation on behalf of him, either in person or through counsel.

7.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the 2nd respondent and perused the entire materials on record.

8.Considering the materials on record and the contention of the learned counsel appearing for the petitioner that the learned Judge has decreed the P.O.P without obtaining report from the 2nd respondent/District Collector, without deciding the Civil Revision Petition on merits, the order of the learned Judge is set aside and the P.O.P is remanded back to the Principal District Court, Coimbatore to decide the issue afresh after obtaining the report from the District Collector, Tiruppur as per Order XXXIII Rule 1(A) of C.P.C.

9.With the above direction, the Civil Revision Petition is disposed of. Consequently the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No
Internet : Yes / No

To

The Principal District Judge,
Coimbatore.



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V.M.VELUMANI, J.

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