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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.09.2020

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THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A. No.3452 of 2019

N.Ayyavoo

... Appellant/Plaintiff

-vs-

- 1.The State of Tamil Nadu,
rep. by the District Collector,
Salem.
- 2.The Revenue Divisional Officer,
Attur, Salem District.
- 3.The Tahsildar,
O/o.Taluk Office,
Attur Taluk,
Salem District.
- 4.Venkatesan
- 5.Manickam
- 6.V.M.Selvarajan
- 7.Sellakaruppan
- 8.Paramasivam
- 9.Selvaraj
- 10.Selladurai
- 11.Vaiyapuri
- 12.Raja @ Loganathan
- 13.M.Ravi
- 14.Munian
- 15.Rangasamy



16.The Director of College Education,
College Road, Chennai.

17.The Deputy Inspector of Survey,
Attur Taluk Office,
Salem District.

... Respondents/Defendants

Prayer: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (na) C.P.C. against the fair and decretal orders made in P.O.P. No.187 of 2010 dated 22.11.2013 on the file of the First Additional District Court at Salem.

For Appellant : Mr.K.Premkumar

For Respondents: Mr.A.Devnarendran,
Government Advocate
for R1 to 3, 16 and 17

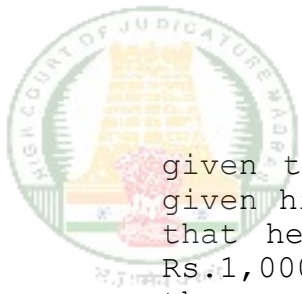
No appearance for R15

R4 to 14 - exparte

JUDGMENT

This appeal has been filed against the impugned fair and decretal order dated 22.11.2013 passed in P.O.P. No.187 of 2010 by the First Additional District Court at Salem dismissing the petition filed by the appellant to permit him to file the suit as an 'informa pauperis'.

2.Mr.K.Premkumar, learned counsel appearing for the appellant would submit that when the appellant filed a petition seeking permission to file the suit for damages as an 'informa pauperis', the same was dismissed on the ground that the appellant is having immovable property and his two brothers are also having immovable properties. Learned counsel for the appellant argued that the person's employment status and total income including retirement benefits in the form of pension, ownership of realisable un-encumbered assets and person's total indebtedness and financial assistance received from the family members or close friends, can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. In the present case, when the property, namely 4 acres of immovable property, said to have been possessed by the appellant, has been taken away from the appellant, the Trial Court erred in holding that the appellant is having 4 acres of land and therefore, he is not entitled to file the suit as an indigent person. Explaining further, learned counsel for the appellant would submit that the appellant has



given the statement of property belongs to him in which he has given his dress materials as his only property and he has stated that he was in possession of the immovables worth about below Rs.1,000/-. While in the cross examination by the respondents, the appellant has deposed that he is having only 4 acres of land, but he has been dispossessed of the same for which when he filed a Writ Petition, the same was dismissed and as against which when he filed a Writ Appeal, the same was also dismissed and after dismissal of the Writ Appeal, he has been evicted from the property, namely, 4 acres of land. Therefore, when all these facts have been shown that the appellant is an indigent person, the Trial Court ought to have declared him as an indigent person for the purpose of instituting the suit.

3.Learned counsel appearing for the appellant would further submit that as per ratio laid down by the Hon'ble Apex Court reported in 2011 (13) SCC 174 in the case of Mathai M.Paikeday vs. C.K.Antony, the subject matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person and therefore, the Trial Court has wrongly taken into account the 4 acres of land as the immovable property of the appellant, held that the appellant has been in possession and enjoyment of the same and that the appellant's brother is having 3 acres and another brother is having 2 acres of land. Moreover, the appellant in his cross examination as P.W.1 has clearly stated that he has received eviction notice as per Land Encroachment Act and as against which he has preferred a Writ Petition and after dismissal of the same, he has also preferred a Writ Appeal, which was also dismissed. The entire facts placed before the Trial Court clearly show that the appellant is an indigent person and he is not having any land and that there is no contra evidence to show that the appellant is having any source of income, but, the Trial Court has wrongly come to the conclusion that the appellant has suppressed the factum that his brother is having 3 acres and another brother is having 2 acres of land. As a matter of fact, though the Village Administrative Officer has given a certificate stating that the appellant has been eking his livelihood as a Daily Coolie, the same was not placed before the Trial Court unfortunately, since the same has been obtained only on 10.03.2014. In any event, when there is no contra evidence to disprove the claim of the appellant that he is an indigent person, the appellant be exempted from paying the Court fee.

4.On the other hand, learned counsel for respondents 1 to 3, 16 and 17 submitted that since the appellant is hailing from affluent family, which could be seen from the findings of the Trial Court that the appellant was having 4 acres of land and his brothers are having 3 and 2 acres of land, the Trial Court has rightly come to the conclusion that the appellant is not a



pauper and he cannot be given the status of informa pauperis.

5. But this Court is unable to find any merit on the submission made by the learned counsel appearing for respondents 1 to 3, 16 and 17. The reason being that the Trial Court in para 20 has made it clear that the appellant was having 4 acres of land and in his cross examination, the appellant has deposed that he received eviction notice as per the Land Encroachment Act in respect of the said 4 acres of land and as against the said notice, he has preferred a Writ Petition No.25449 of 2007 and subsequent to the dismissal of the Writ Petition on 27.07.2007, he has also filed a Writ Appeal No.1499 of 2009 and after the dismissal of the Writ Appeal on 31.07.2009, he has been evicted from the petition mentioned property. Therefore, this Court is of the view that the appellant was not owning 4 acres of land and the said findings given by the Trial Court is against Explanation I to Rule 1 and Order 33 of the Civil Procedure Code. As per the above provision, an indigent person is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed.

6. Secondly, a Certificate dated 10.03.2014 issued by the Village Administrative Officer has not been placed before the Trial Court and the same would show that the appellant has been residing in the Government poramboke land and he has been eking his livelihood only as a Daily Wager.

7. Thirdly, the Apex Court in the afore mentioned case of Mathai M. Paikeday vs. C.K. Antony reported in 2011 (13) SCC 174 has made it clear that the subject matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person. It is relevant to extract paragraphs 18 and 19 as under:

'18. To sum up, the indigent person, in terms of Explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not possessed of sufficient means to pay court fee when such fee is prescribed by law, or is not entitled to property worth one thousand rupees when such court fee is not prescribed. In both the cases, the property exempted from the attachment in execution of a decree and the subject-matter of the suit shall not be taken into account to calculate financial worth or ability of such indigent person.

19. Moreover, the factors such as person's employment status and total income including retirement benefits in the form of pension, ownership of realisable



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unencumbered assets, and person's total indebtedness and financial assistance received from the family members or close friends can be taken into account in order to determine whether a person is possessed of sufficient means or indigent to pay requisite court fee. Therefore, the expression 'sufficient means' in Order 33 Rule 1 of the Code of Civil Procedure contemplates the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee.'

8.As against this dictum, the Trial Court has taken into account the subject matter of the suit property. Since the Trial Court has committed error in holding that the appellant was having 4 acres of land, when he has been dispossessed from the above land and challenging the same when the Writ Petition and Writ Appeals filed by him have also been dismissed, the appellant is liable to be exempted from paying the Court fee. Accordingly, the appeal stands allowed. The Trial Court is directed to proceed with the pending trial as the appellant is the indigent person. The appellant is exempted from paying the court fee. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

vga

To

1.The I Additional District Court at Salem.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+lcc to Mr.K.Premkumar, Advocate, S.R.No.31869

C.M.A. No.3452 of 2019

BS(CO)
CB(15/07/2021)