

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:04.03.2021

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

C.M.A.No.1614 of 2009

1.Parvathi  
2.Inidirani

.. Appellants/Petitioners/  
Plaintiff

Vs.

1.Kumar  
2.Ramalingam Asari  
3.Sivalingam  
4.Arasumani  
5.Amirtham

.. Respondents /Respondents/  
Defendants

PRAYER : Civil Miscellaneous Appeal is filed under 43 Rule (1) of the Civil Procedure Code, against the fair order and decretal order dated 09.02.2009 passed in P.O.P.No.99 of 2007, in unnumbered in O.S.No. of 2007, on the file of the Principal District Judge, Villupuram.

For Appellants : Mr.D.Baskar

For Respondents : No Appearance

J U D G M E N T

The appellants herein are the petitioners, who filed a suit for partition against the defendants along with a petition under order XXXIII Rule 7(iii) of CPC, along with a petition to permit them as Pauper to file the suit as they have no means to pay the Court fee.

2. The respondents in that Original Petition contested the said Original Petition submitted that the petitioners are having sufficient means to pay the Court fee and prayed to dismiss the petition. Aggrieved by that they have preferred this appeal.

3. Point for Consideration:

Whether the lower Court erroneously concluded that they are having sufficient means to pay the Court fee even though they proved that they are persons of no means?

4. The learned counsel for the appellants submits that the appellants have got married and settled with their husbands and they have not possessed any individual properties. But the trial Judge, on considering the property belonging to their husbands concluded that they have sufficient means to pay Court fee, which is erroneous under law and he prays to set aside the order passed by the trial Judge.

5. On perusal of the records reveals that these appellants claiming reliefs of partition for the suit property, which is said to be belonged to their father absolutely. The respondents are the brothers and purchasers of the property. The objection raised by the brothers/respondents 1 and 2 that these petitioners were already given marriage and they were lived along with her husband and children, who are all possessed immovable properties sufficiently.

6. During the cross examination of PW.1, he stated that she had three daughters, all are married and they are helping her. Besides, her husband also possessed own houses at Karamanikuppam, PW.2/2nd petitioner also admits that she is having house in the Housing Board. Hence, as per the evidence of PWs.1 and 2 they themselves admit that their families own properties. Order 33 rule 1, reads as follows:

1. 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 the 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 .....

(i) to provide that a person shall be deemed to be an indigent person, 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 fees prescribed by law for the plaint in such suit, or where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than property exempt from attachment in execution of a decree and the subject matter of the suit.

7. Considering the oral and documentary evidence, the trial Judge rightly concluded that they are having properties valued more than Rs.1,000/- and the appellants are not entitled to declare as Pauper which calls for no interference by this Court. Accordingly, the substantial question of law is answered.

8. Accordingly, this Civil Miscellaneous Appeal is dismissed as devoid of merits. No Costs.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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1.The Principal District Judge,  
Villupuram.

C.M.A.No.1614 of 2009

GMI (CO)  
RMP (09/04/2021)