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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.286 of 2010

John Brown Trust
rep.by its Trustee,

1.A.A.Joseph

S/o.Late A.E.Antony,
Creswell Cottage, Hospital Road,
Ootacamund.

..Appellant/Plaintiff

Vs.

1.Michael Charles John Chown Longmore
Vale View House, High Street,
Elham, Nr.Canterbury,
Kent, CT 4 6SY, England.

2.J.Prabhu

3.Director, Higginbothamams Pvt Ltd.,
No.116, Anna Salai, Chennai - 600 002
Having its Show room at 125, Oriental Building
Commissioners Road, Ootacamund.

4.K.F.Jacob

5.Raunny

6.P.K.Damodaran

7.The Superintendent of Police,
Police Control Room,
Door No.127, Oriental Building,
Commissioner's Road,
Ootacamund.

8."Gonsalves & Gonsalves
A Partnership firm, rep.by
its partners J.Prabhu and kenneth
Gonsalves, Door No.128,
Oriental Buildings,
Commissioner's Road,
Ootacamund.



- 9.T.P.N.Nambiar
10.D.Robinson
11.Miss.Chandra
12.Mrs.Selvam Mary
13.Mrs.Susan Daniel

14.The Inspector of Plantations,
Ootacamund, C/o.The Commissioner of Labour,
DMS Compound, Teynampet, Chennai and
having its office at Door No.130, Oriental
Building, Commissioner's Road,
Ootacamund.

15.Prakash Damodaran

16.Mary Browne
Rep.by its alleged Administrators,
1.M.CJ.C Long More by power agent J.Prabhu
2.J.Prabhu
Vale View House, High Street, Elham
Nr.Canterburry, Kent, CT 4 6sY, England.

17.Alexander

18.Lawrence

19.Antony Susai

20.Raju Susai

21.The State of Tamil Nadu,
Rep.by the District Collector of Nilgiris
Collectorate, Ootacamund.

22.Mrs.Kamala Krishnamoorthy

23.K.Rajkumar

24.K.Sampathkumar

25.K.Ashok Kumar
(Respondents 4 to 6, 10 to 13, 15, 17 to 20
23 & 25 are given up.) ..Respondents/Defendants

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule 1
of C.P.C., against the order dated 17.08.2009 in O.P.No.34 of
2004 on the file of Principal District Court, Udagamandalam.



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For Appellant : R.Subramanian

For Respondents : Mr.Hemanath Ragu
For M/s.S.Ramasubramaniam
Associates[For R3]

Mr.S.Jaganathan
Government Advocate (CS)
[For R7, R14 & R21]

No appearance for R2, R8 & R16

R1 & R22 service awaited

R9 - Died

R4 to R6, R10 to R13, R15, 17 to
20, R23 & R25 - Given Up

J U D G M E N T

The Fair and Decreetal order dated 17.08.2009 passed in O.P.No.34 of 2004 is sought to be set aside in the present Civil Miscellaneous Appeal.

2. The petitioner states that the trial Court has not considered the spirit of Order 33 Rule 5 C.P.C., The provision requires that the Court must ascertain whether the allegations set out in the petition is sufficient enough for the purpose of granting the relief. It is further contended by the petitioner that the Court is not expected to conduct a Roving enquiry into the merits of the claim set out in the suit by the person, who is filing a petition to declare as an indigent person.

3. The learned counsel for the appellant reiterated that the Trial Court has committed an error in not considering the petition for the purpose of granting permission to the appellant to sue as an indigent person.

4. It is not necessary to go into the issues raised in the appeal. It is sufficient if the ingredients of Order 33 Rule 5 is considered or not. Order 33 Rule 5 Sub Clause B contemplates that "the court shall reject an application for permission to sue as an indigent person, where the applicant is not an indigent person"

5. Admittedly, the appellant is a Private Trust namely John Brown Trust. O.P.No.34 of 2004 was instituted before the District Judge at Udagamandalam to permit the petitioner Trust



to file the suit as an indigent person. Admittedly, the appellant Trust is having large number of properties, which all are valuable. The litigation is also relating to the properties.

6. Under these circumstances, this Court is of the considered opinion that the appellant Trust cannot be construed as an indigent person as contemplated under Order 33 Rule 5 of C.P.C., The very fact that the appellant is a Private Trust, possessing large number of properties is evident to establish that the petitioner is not an indigent person. Therefore, there is no reason to interfere with the orders passed by the Trial Court. The Trial Court, while deciding Ponit No.1, whether the petition is without cause of action has narrated the details of the properties possessed by the petitioner Trust. Even at the time of deciding the petition by the trial Court in the year 2009, the property was worth about Seven Hundred Lakhs and under these circumstances, the reasonings given by the trial Court in its order is certainly candid and convincing and in accordance with the well established principles. The trial Court further arrived a conclusion that the petitioner failed to make out a cause of action as contemplated under Order 33 Rule 7(d) of C.P.C., to grant a relief under Order 33 Rule 1 C.P.C.

7. In view of the facts and circumstances, this Court do not inclined to interfere with the findings arrived by the trial Court. Therefore, the Fair and Decreetal order dated 17.08.2009 passed in O.P.No.34 of 2004 stands confirmed and accordingly, C.M.A.No.286 of 2010 stands dismissed. No costs.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Principal District Court,
Udagamandalam.

+1cc to Mr.R.Subramanian, Advocate, S.R.No.385
+1cc to Special Government Pleader(CS), S.R.No.234

C.M.A.No.286 of 2010

RSI (CO)
CB(01/09/2021)