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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.984 of 2016
C.M.P.No.7510 of 2016

1.Neelavathy
2.Pooncholai

...Appellants/Claimants

Vs.

1.Murugavalli @ Sumathi
2.Minor Arun
S/o.Deivasigamani
rep.by guardian mother 1st respondent

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 41 Rule 1 (na) of CPC, to set aside the judgment and decree dated 19.11.2015 passed in P.O.P.No.18 of 2012 on the file of the II Additional Sub-Court, Villupuram.

For Appellant : M/s.R.Meenal

For Respondents : Mr.M.Gnanamoorthy
for Mr.N.Suresh

J U D G M E N T

The Judgment and Decree in P.O.P.No.18 of 2012 dated 19.11.2015 is under challenge in the present Civil Miscellaneous Appeal.

2. The appellants are the plaintiffs, who have instituted a suit for partition in P.O.P.No.18/2012, which is filed under Order 33 Rule 1 of C.P.C, seeking permission of the Court to institute the suit as indigent persons. The trial Court adjudicated the issues and arrived at a conclusion that the plaintiffs cannot be construed as indigent persons and accordingly, rejected the petition. Thus, the present Civil Miscellaneous Appeal is filed.

3. The learned counsel appearing for the appellants sterroneously contended that the procedure contemplated under Order 33 Rule (6) of C.P.C., was not followed by the trial Court



before dismissing the petition. According to the learned counsel, the Code of Civil Procedure mandates that the Court shall fix a date for receiving evidence before rejecting an application enabling the applicant to produce the proof of his indigency. In this case, no such notice was issued and no opportunity of hearing was given to the petitioner/appellants before the trial Court before rejecting his application. In the absence of any such enquiry being conducted, the trial Court ought not to have arrived at a conclusion that the appellants are not indigent persons.

4. The learned counsel for the appellants mainly contended that the appellants are possessing Nanja Land to an extent of 0.86 acres. Since the land is a dry land, the appellants are not deriving any income from and out of the said land. Thus, they have no sufficient funds or means to pay the Court fee, which is enough to consider the petition and permit the appellants to institute a suit as indigent persons.

5. The learned counsel for the respondents objected the same by stating that the petitioners themselves admitted before the trial Court that they are possessing a land to the extent of 0.86 acres. The first appellant is the mother of the second appellant and the second appellant has got married, and she is living with her husband and she is also having a separate income. Under these circumstances, the appellants cannot be held as indigent persons, so as to get benefit under Order 33 Rule (1) of C.P.C.

6. This Court is of the considered opinion that the Court can reject the application under Order 33 Rule(5) of C.P.C, on the ground that the applicant is not an indigent person. Whether the applicant is an indigent person or not, is subject to the satisfaction of the Court with reference to the documents and evidence produced by the parties concerned. As far as the appeal on hand is concerned, the appellants themselves admitted that they are possessing a land to the extent of 0.86 acres in Survey No.108.3. Further, it is stated that it is a dry land and the appellants are not deriving any income from and out of the said land. The trial Court in this regard made a finding that while admitting the fact that the petitioners are possessing a land, they have failed to produce any proof to establish that they have not got any income from and out of the said land. In the absence of any such evidence, the benefit of Order 33 Rule 1 of CPC cannot be extended in favour of the appellants.

7. This Court is of the considered opinion that Order 33 Rule (1) of C.P.C, unambiguously stipulates that the suit may be instituted by an indigent person, if he is not possessed of sufficient means to enable him to pay the Court fee prescribed



by law for the plaint in such suit. However, Rule (5) contemplates the rejection of application. Accordingly, the Court shall reject the application for permission to sue as an indigent person where the applicant is not an indigent person. Thus, a duty is cast upon the petitioner to establish before the Court of law that he is an indigent person and not having sufficient source of income. Two circumstances may be considered by the Courts. One is that the person may have income but such income may not be sufficient to meet out the Court expenditure and the other circumstance would be, there is no income at all and the petitioner is incapable of paying the Court fee for institution of a suit. In both circumstances, it is necessary that the Courts are bound to consider whether a person is absolutely incapable of paying the Court fee or having income but not in a position to pay the Court fee. For example, a person may be earning a sum of Rs.15,000/- per month. He may plead that the said amount is not even sufficient to meet out his family expenditure and lead his livelihood. Therefore, he is not having sufficient funds to pay the Court fee. Such circumstances cannot be construed as a valid ground for the purpose of granting permission to institute a suit under Order 33 Rule 1 of C.P.C. Therefore, mere fact that a person is not having sufficient income so as to pay the Court fee, cannot be a ground. It is to be considered whether the income derived is not only sufficient or the petitioner is absolutely incapable of paying the Court fee for the purpose of instituting a suit. If the Court accepts such a ground of insufficient funds in general, there is a possibility of every person filing a petition under Order 33 Rule 1 of C.P.C, for institution of a suit as an indigent person. The very purpose and object of Order 33 Rule 1 of C.P.C., is to mitigate the sufferings of a person who is absolutely incapable of paying the Court fee in order to establish his civil rights. Because a person is not incapable of paying the Court fee, he cannot be denied justice so as to establish his civil rights before the Court of law. 'Capability' or 'incapability' is to be assessed strictly with reference to the documents and evidence produced before the Court of law. This being the principles to be adopted, the present case reveals that the petitioners are possessing a land to the extent of 0.86 acres. The second appellant, who is none other than the daughter of the first appellant, got married, and she is living with her husband. It is not established before the trial Court that the second appellant is incapable of paying the Court fee.

8. Considering all these facts and circumstances, this Court is of the considered opinion that the appellants have not substantiated their indigences which is required under Order 33 Rule 1 of C.P.C. Therefore, the trial Court has rightly arrived a conclusion that the petition is liable to be dismissed. This Court does not find any infirmity in respect of the findings.



Accordingly, the Judgment and Decree dated 19.11.2015 in P.O.P.No.18 of 2012 stands confirmed and consequently, the Civil Miscellaneous Appeal stands dismissed. No costs. Connected civil Miscellaneous Petition is also closed.

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Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

Ssb

To

The II Additional Sub-Court,
Villupuram.

+1cc to Mr.R.Meenal, Advocate, S.R.No. 383
+1cc to Mr.N.Suresh, Advocate, S.R.No. 488

C.M.A.No.984 of 2016

RSV(CO)
GN(11/08/2021)