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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2021

CORAM:

THE HON'BLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.NO.2791 OF 2014

AND

MP NO.1 OF 2014

Balu

...Appellant

vs.

Kathavaraya Udayar

...Respondent

Civil Miscellaneous Appeal filed under Order XLIII Rule 1(NA) of Civil Procedure Code, 1908 against the Fair and Decreetal Order dated 05.08.2014 made in POP No.71 of 2012 on the file of the Principal District Judge, Villupuram.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.P.Gurunathan

JUDGMENT

(This case was heard through Video Conferencing)

This Appeal has been filed challenging the order dated 05.08.2014 passed by the learned Principal District Judge, Villupuram in POP No.71 of 2012 rejecting the Petitioner's application under Order 33 Rule (1) r/w, order 7 Rule 1 of CPC seeking exemption from payment of Court fees for filing a suit for permanent injunction restraining the respondent/ defendant from interfering with the petitioner's/ plaintiff's peaceful possession and enjoyment of the suit "A" schedule property and also direct the respondent/ defendant to pay a sum of Rs.24,50,000/- as compensation.

2. Heard Mr.C. Munusamy, learned counsel for Appellant and Mr.P.Gurunathan, learned counsel for respondent.



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3. The appellant/ plaintiff claims that he is an indigent person and does not have any means to pay Court fee for filing this suit. In such circumstances, POP No. 71 of 2012 was filed by the petitioner/ plaintiff.

4. The learned Principal District Judge, Villupuram under the impugned order dated 05.08.2014 passed in POP No.71 of 2012 dismissed the petition by giving the following reasons:

a) during the course of cross examination the petitioner/ plaintiff has categorically admitted that he is the owner of the lands situated in Kumaramangalam Village and those lands are ryotwari lands and there was also a thatched house belonging to him and the normal value of the said lands per cent is Rs.2,00,000/-.

b) The petitioner is the owner of the "A" schedule property which is the subject matter of lease and is the subject matter of the suit.

c) even according to the petitioner, per year the lease amount payable by the respondent is Rs.1,00,000/- .

d) the lease agreement was entered into between the petitioner and the respondent on 29.12.2010, whereas the petitioner has filed the suit as an indigent person only in the year 2012. The petitioner has not stated as to whether he has received the lease amount of Rs.2,00,000/- for the two years from 2010 to 2012.

5. By giving the aforesaid reasons, the Trial Court has rejected petitioner's application filed in Order 33 Rule (1) r/w, Order 7 Rule 1 of CPC seeking for exemption from payment of Court fee for filing the proposed suit against the respondent.

6. Under Order 33 Rule 1 of CPC, it is for the Appellant to prove by oral and documentary evidence that he is an indigent person which he was miserably failed to prove as seen from the evidence available on record before the Trial Court which has been duly considered by the Trial Court while dismissing the petition.

7. This Court does not find any infirmity in the findings of the Trial Court. Accordingly, there is no merit in this Appeal. In the result, this Civil Miscellaneous Appeal is



dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS V)

//True Copy//

Sub Assistant Registrar

ab/vsi2

To

1. The Principal District Judge,
Villupuram.

C.M.A.No.2791 of 2014
and
MP No.1 of 2014

GPL (CO)
CS/23/11/2021