



CRP.No.1539 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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and CMP.No.10041 of 2019

Subbrayan

... Petitioner

Vs.

Selvam

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the fair and decretal orders dated 18.01.2019 in IA.No.494 of 2017 in unnumbered AS of 2017 on the file of the learned Principal District Judge at Puducherry.

For Petitioner : Mr.S.Sudarshan

For Respondent : Mr.R.Mugundhan

ORDER

This civil revision petition has been filed to set aside the fair and decretal orders dated 18.01.2019 in IA.No.494 of 2017 in unnumbered AS of 2017 on the file of the learned Principal District Judge at Puducherry, thereby allowing the petition filed under Order 44 Rule 1 r/w Section 151 of CPC granting leave to sue as an indigent person.



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2. The respondent is the defendant in the suit filed by the petitioner for recovery of money. The said suit was decreed in favour of the petitioner.

Aggrieved by the same, the respondent preferred appeal suit along with the application under Order 44 Rule 1 r/w Section 151 of CPC seeking leave to sue as an indigent person in the above said appeal. The said application was allowed and aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner vehemently contended that the respondent filed application under Order 44 Rule 1 of CPC. It is very clear that the person who is unable to pay court fees in the appeal, he may be allowed to file appeal as an indigent person subject to the provision relating to the suits by indigent person. The filing of the suit by indigent person is related to provision under Order 33 Rule 2 of CPC. Accordingly, the petition should contain the particulars required in regard to plaints in the suit i.e. schedule of any movable or immovable property belonging to the applicant with the estimated value thereof shall be also annexed thereto. However, the respondent failed to file application with details of the movable and immovable properties. The first appellate court on *suo motu* called for report from the Office of the



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Deputy Collector, (Revenue) North. By its report dated 05.04.2018, it was stated that already the respondent purchased the property and before initiation of the suit, he settled the property in his wife's name. He is also possessing two wheeler and other household articles. Even then, the respondent failed to disclose the same as contemplated under Order 33 Rule 2 of CPC. Therefore, the application seeking leave to file an appeal as indigent person is liable to be rejected as per Sub Rule 5 of Order 33 of CPC.

4. The learned counsel for the respondent would submit that he filed affidavit in support of the petition and categorically stated that he is not possessing sufficient means to pay requisite court fees. He had immovable property at Mudaliarpeta, Pondicherry and it is not transferable since it was allotted by the Government of Pondicherry under LGR patta (LGR.No.1145 of 2007). Therefore, the court below rightly allowed the petition and permitted the respondent to file appeal as indigent person.

5. Heard, the learned counsel for the petitioner and the learned counsel for the respondent.



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6. The respondent suffered decree of recovery of money. Aggrieved by the same, the respondent filed appeal suit with application seeking leave to file appeal as an indigent person under Order 44 Rule 1 r/w 151 of CPC. On perusal of affidavit, he has stated that he has not possessed sufficient means to pay requisite court fees i.e. Rs.20,128.28/-. He owned the property at Mudaliarpet, Pondicherry and it is not transferable since it was allotted by the Government of Pondicherry under LGR patta (LGR.No.1145 of 2007). He has no other means. While pending the said application, the court *suo motu* called for the report from the Deputy Collector, (Revenue) North and by its report dated 05.04.2018 stated that the respondent possessed the property which was issued under LGR patta and it is left vacant. He purchased one property and subsequently settled in favour of his wife. Other than the immovable property, he is possessing two wheeler and other household articles. On receipt of the same, the court below failed to give any opportunity to the petitioner to raise objections.

7. That apart, also on perusal of the counter affidavit filed by the petitioner, it is clear that the respondent borrowed a sum of Rs.2,00,000/- on 26.05.2006 from the petitioner. Thereafter, he failed to return the amount and



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as such, the petitioner had informed that he intended to file a suit for recovery of money. The respondent had settled the immovable property which was purchased by him by the registered sale deed dated 18.12.2008 in favour of his wife just three months prior to the suit. That apart, he is having two wheeler and other movable properties as per the report submitted by the Deputy Collector, (Revenue) North. As rightly pointed by the learned counsel for the petitioner, it is mandatory form prescribed for the purpose of filing the application seeking leave to prefer an appeal as an indigent person under Order 44 Rule 1 of CPC that the respondent should disclose his immovable and movable properties as contemplated under Order 33 Rule 2 of CPC. Admittedly the respondent failed to comply with Sub Rule 2 Order 33 of CPC. In fact, the respondent had settled the property which was purchased by him after knowing the fact that the respondent is going to initiate suit for recovery of money in favour of his wife. Therefore, it shows that the respondent had sufficient means to pay court fees. As such, he cannot be allowed to file appeal as an indigent person.

8. In view of the above, the fair and decretal orders dated 18.01.2019 in IA.No.494 of 2017 in unnumbered AS of 2017 on the file of the learned



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Principal District Judge at Puducherry are set aside and this civil revision petitions is allowed. However, the respondent is at liberty to file appeal with the requisite court fees in the manner known to law. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To
The learned Principal District Judge at Puducherry.

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