



C.M.A.No.2414 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2023

PRONOUNCED ON : 21.03.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.2414 of 2018

B.Kumara Babu

... Appellant

vs.

1.Mrs.Umarani
2.R.Umakanthan
3.Mrs.Geethalakshmi
4.Mrs.Vijayalakshmi

5.The District Collector,
Chennai - District.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Order dated 06.07.2018 made in O.P.No.132 of 2005 on the file of the VII Additional City Civil Court, Chennai.

For Appellant : Mr.P.Gunaraj

For Respondents : Mr.Poovendhan

for M/s.R.Manikavel [R1 to R4]

Mr.C.Jayaprakash,

Govt. Advocate (C.S.) [R5]

JUDGMENT

Having aggrieved of the Order passed by the VII Additional City Civil Court, Chennai, in O.P.No.132 of 2005 dated 06.07.2018, the appellant herein has preferred this appeal.



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2. Originally, a suit was laid by the appellant herein seeking permission of the Court to institute the suit as an indigent person and to direct the defendants to quit and deliver the vacant possession of the suit property bearing Door No.16, Plot No.23, 2nd Cross Street, Sakthivel Nagar, Peravallur, Chennai-82, comprised in T.S.No.932 and morefully described in the schedule which is said to be in the illegal occupation of the defendants and to direct the defendants to pay a sum of Rs.5000/- per month being the damages for use and occupation of the schedule property from the date of plaint till the date of delivery of possession and for costs.

3. On behalf of the plaintiff, it is averred that the above said suit property was purchased by his adoptive father late K.Radhakrishna Naidu with his self earnings from the Chellappa Naidu Co-op.House Society Ltd., under document No.1594/1972 registered at the office of Sub-Registrar, Sembium. The said Radhakrishna Naidu was in peaceful possession and enjoyment of the property as sole and lawful owner and that he constructed a house on the vacant land with his own money and he was paying tax to the Corporation of Chennai from 1978 onwards. He was further averred that as Radhakrishna Naidu had no issues and the plaintiff's natural father P.Balaraman gave the plaintiff in adoption to the said K.Radhakrishna Naidu on 20.10.1968. The plaintiff's wife and



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adoptive mother died on 07.01.1987 leaving the plaintiff and his father as her legal heirs and the adoptive father died on 07.11.1987 at the residence of Balaraman. It is further averred that his adoptive father had brother by name Ramachandran and a sister by name Sakunthala, they were not affectionate towards K.Radhakrishna Naidu and neglected him. But the plaintiff from the time of his adoption was very loving and affectionate to his father and so he had executed a settlement deed in favour of the plaintiff on 09.09.1987 and in the said deed, the plaintiff's adoptive father categorically stated that his brother and sister are living separately from him. The plaintiff's father also executed a Will on 09.10.1987 bequeathing the schedule of property in all powers of alienation and so plaintiff filed O.P.No.325 of 2002 for probate of the Will and orders was passed by this Court in his favour and so as per the orders of this Court in O.P.No.325 of 2002, the plaintiff is absolute and lawful owner of the schedule property. The 1st defendant is the daughter of Ramachandran and brother of plaintiff's father and her parents after the death of Radhakrishna Naidu obtained a relationship certificate from Tahsildar, suppressing the truth stating that they are the relatives of late Radhakrishna Naidu and the Tahsildar without making the necessary enquiry and issued the relationship certificate and on the basis of that certificate, the Tahsildar issued a patta and on the basis of patta the defendants started interfering



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with the schedule property. The plaintiff on coming to know the grant of patta to the parents of the 1st defendant submitted a petition before the Collector of Chennai on 10.05.2000 for cancellation of patta issued in favour of Ramachandran and Sakunthala and the Collector, after a detailed enquiry has cancelled the patta issued in their favour by its order dated 17.08.2001 and directing the Tahsildar to carry out the necessary changes in all the revenue records. The 1st defendant had filed W.P.No.32840 of 2001 against the plaintiff and the Collector to quash the order passed by the Collector dated 17.08.2001 and the same is pending. His father late K.Radhakrishna Naidu induced one Thangasamy as a tenant in the suit property and taking advantage of her position as wife of Ramachandran filed RCOP No.1346 of 1988 and the said tenant denied the title of the 1st defendant's husband but it was ordered eviction and appeal filed also dismissed. Taking advantage of the order of eviction, the 1st defendant took possession in E.P.No.221 of 1998 on 04.09.1998 and the 1st defendant and her sons and daughter are illegal possession of the suit property preventing the plaintiff from enjoying the suit property by virtue of the Will and the order passed by this Court in O.P.No.325 of 2001.

4. It is counter acted by the respondents 1 to 4 by filing counter that



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the appellant/petitioner is a seasoned litigant and he has filed several suits and cases against the respondents 1 to 4 to grab the property of the respondents 1 to 4 under one pretext or other. The Rent Control Appeal and Civil Revision Petition filed by the tenant in collusion with the petitioner were all dismissed and the 3rd respondent took possession by filing execution petition through Court of law. The petitioner has filed O.S.No.6694 of 1994 and the same was also dismissed as withdrawn. The petitioner subsequently filed another suit in O.S.No.855 of 2001 for the relief of declaration that the Release Deed executed in favour of the respondents 1 to 4 herein in Doc.No.1863 of 1999 was null and void and for other reliefs. This suit was also withdrawn by the petitioner and the same was dismissed. The present suit filed in Forma Pauperis under Order 33 Rule 1 is one such frivolous attempt to grab the respondent's property which the petitioner has been trying for the past 20 years and therefore, prayed for dismissal.

5. On behalf of the 5th respondent, namely, the District Collector of Chennai, it is stated that as per the Report of Taluk Revenue Inspector stating that the petitioner is major, residing along with other family members at No.P/149, 28th Street, Agastiar Nagar, Villivakkam, Chennai-



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49. But on the basis of the plaint allegation he is an adopted son of one Radhakrishna Naidu and the petitioner states that he is no way connected with the family of his parents. Further, the Revenue Inspector's Report states that the petitioner is working in a medical shop and earning Rs.12,000/- p.m. The petitioner is also one among the share holder of the suit property. On the basis of the Report and enquiry, the petitioner is having monthly income and also after the death of his real father Balaraman, his ancestral property was sold in the year 1997 and the petitioner has got share in the property. Hence, the petitioner is not an indigent person and liable to pay Court fee and he further reiterate that the petitioner is having sufficient funds to pay the Court fee and the prayed for dismissal of the petition.

6. Heard both sides and the relevant material records are perused.

7. After hearing both sides, the trial Court has held that relying upon the counter of the District Collector, Chennai and the Report of the Revenue Inspector that the petitioner as he was working in the medical shop and earning a monthly income of Rs.12,000/- and he being one of the share holders of the premises bearing Door No.P/149, 28th Street, Agastiar Nagar, Villivakkam, Chennai-49. It is also pertinent to note that



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the Revenue Inspector's Report states that he has got a share in the property of his natural father, after the property was sold away in 1997.

8. In this regard, it is relevant to extract Order XXXIII Rule 9 CPC as under:

"9. Withdrawal of permission to sue as an indigent person.-

The Court may, on the application of the defendant, or of the Government Pleader, of which seven day's clear notice in writing has been given to the plaintiff, order [that the permission granted to the plaintiff to sue as an indigent person be withdrawn]-

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as an [indigent person]; or

(c) if he has entered into any agreement with reference to the subject matter of the suit under which any other person has obtained an interest in such subject-matter."

9. The core question is whether a particular person has got sufficient means to pay the Court fee or not ?

10. Perused the entire materials on record. The power vested under Order XXXIII Rule 9 CPC is discretionary power. The Court may dis-pauper on valid reasons. A party who applies under Order XXXIII Rule 9



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CPC has to satisfy the Court that he does not have the capacity to pay the Court fee. It is not suffice for a person to make bald statement to that effect. It is a requirement of law that the statement has to be made with all bonafides. PW1 in his proof affidavit has stated that he is paying the monthly rent of Rs.500/- for the premises where he was residing. He is working as a collie and earning Rs.150/- per day and his monthly income is Rs.4500/-. It is also to be noted that he preferred Rent Control Appeal and the appeal was conducted with his own money.

11. As mentioned supra, as per the evidence of RW1, Tmt.Uma Rani, Tahsildar, it appears that the petitioner was working in a medical shop for a monthly income of Rs.12,000/- at the relevant point of time and he is also one among the share holder of the premises bearing Door No.P/149, 28th Street, Agastiar Nagar, Villivakkam, Chennai-49. It is note worthy to mention that the petitioner got a share in the ancestral property in the year 1997 after the death of his natural father Balaraman. Therefore, in view of both side evidences, the trial Court has come to a correct conclusion that the petitioner is having sufficient means to pay the Court fee and pauper petition was dismissed.

12. In deciding the question of pauper the relevant point of time is



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the date of application. Looking at the matter as it stood on that date, whether the applicant was possessed of sufficient means enable him to pay the Court fee is the issue. It is pellucid that as per the evidence of RW1, he has sufficient means to pay the Court fee and he is dis-paupered by the trial Court on sound reasons and the same need not be interfered with.

13. With these observations, this Civil Miscellaneous Appeal is dismissed and the Order dated 06.07.2018 made in O.P.No.132 of 2005 on the file of the VII Additional City Civil Court, Chennai, is confirmed. No costs.

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Index : Yes/No
Speaking / Non-speaking order
ssn

R.KALAIMATHI, J.,

ssn



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To:

1. The VII Additional City Civil Court,
Chennai.
2. The District Collector,
Chennai District.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

Pre-delivery Judgment in

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