



C.R.P(MD)No.1445 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **23.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1445 of 2023

and

C.M.P(MD)No.7225 of 2023

Raja

...Petitioner/1st Respondent/
1st Defendant

Vs.

1.Shanthi

...1st Respondent/Petitioner/
Plaintiff

2.The State represented by
The District Collector,
The District Collector's Office,
Thanjavur.

...2nd Respondent/
2nd Respondent/
2nd Defendant

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to pass an order to set aside the fair and decreetal order dated 15.02.2023 passed in Pauper O.P.No.82 of 2019 in O.S.No.41 of 2023 pending on the file of the learned Principal District Judge, Thanjavur.

For Petitioner : Mr.R.Venkatesan
M/s.Right Law Associates



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ORDER

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The present Civil Revision Petition has been filed against the fair and decreetal order dated 15.02.2023 passed in Pauper O.P.No.82 of 2019 in O.S.No.41 of 2023 pending on the file of the learned Principal District Judge, Thanjavur.

2. The petitioner is the first defendant in O.S.No.41 of 2023. In the said suit, the first respondent/plaintiff had filed an application under Order 33 Rule 1 of C.P.C. to declare herself pauper and to prosecute the proceedings before the Court. The Court has allowed the application with the following observations:

"13. From the evidence of PW1, it is seen that she has no income through any source except the petition mentioned property and hence, she is unable to pay a sum of Rs.1,92,000/- towards Court fee for filing a suit as against the first respondent. Even though RW stated in his evidence that the petitioner is having 50 sovereigns of jewels and movable properties of three two wheelers, but in order to prove the same 1 respondent has not produced any of the document except Ex.R1 which is the invitation of ear boring ceremony conducted by the elder son of the petitioner for his son. Further, during the course of cross examination of RW1, he admitted that except the details of gas subscription amount, to other transactions mentioned in the Exp8 and Exp9 pass books stands in the name of the petitioner.

14) During cross examination of PW1 by the 2 respondent, she has admitted that she is residing in a



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petition mentioned house, which belongs to her and she has no other source of income. Except that house, no other source is available for gain or yield income. Now, whether the alleged property using by the petitioner herein as house, can be considered as a enough means to pay the court fee for filing a suit for declaration.

15) It is well settled law that capacity to raise funds could only form of receivable assets which a person could in the normal circumstance convert into cash and utilize for the litigation without detriment to her normal existence. Hence, no person cannot be expected to sell the property using as only dwelling place to pay the court fee.

16) In this regard, it is whhwhile to mention the observation made by our Ha'ble Supreme Court in State of Haryana vs Darshana Devi in AIR 1979 SCC 455 wherein, our Hon'ble Supreme Court has held that

"In a criminal case, the benefit of doubt goes to the accused and in a civil case, the benefit of doubt regarding payment of court fee being the physical statue should go to the litigant, thereby allowing to pay court fee comes as due arise regarding the court fee."

17) Furthermore, the petitioner have only a house which is not at all disputed by the respondents. Since that house does not come under the category of income yielding, it cannot be considered as source of income and sufficient means to pay the court fee. In other words, mere possession of the house, in my considered view, it is not sufficient to pay the court fee and only the income garnered from the property has to be considered to decide the application seeking the relief of exemption for payment of court fee. Hence, this court has no hesitation to hold that the petitioner is entitled to sue the suit as pauper on the ground of no sufficient means to pay the court fee. Thus, this point is answered accordingly.



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18) In the result, this Pauper Original Petition is allowed as prayed for. It is ordered to take the plaint on file, if it is otherwise correct. No costs."

3. Exhibit P8 and Exhibit P9 are the bank statement of the first respondent.

4. There is no merit in challenge to the impugned order. The second respondent is also a party to the proceedings. The Court would have obtained a certificate from the District Magistrate regarding the indigency of the respondents. The petitioner has not discharged burden of proof that the first respondent is not an indigent person. Therefore, there is no case made out interference with the impugned order.

5. The present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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- 1.The learned Principal District Judge,
Thanjavur.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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