



WEB COPY



C.R.P.No.4310 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4310 of 2024
and C.M.P.No.23937 of 2024

M.Chandrasekar

.. Petitioner

Versus

1.S.Ranjitham

2.Minor Sathia Sree

Rep. by Next Friend/Guardian,

Mother S.Ranjitham

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal orders dated 20.08.2024 passed in I.A.No.3 of 2024 in P.O.P.No.234 of 2019 in O.S.No.20 of 2022 on the file of the Family Court at Salem.

For Petitioner : Mr.P.Jagadeesan

ORDER

This civil revision petition arises against the order of the Family Court at Salem in I.A.No.3 of 2024 in P.O.P.No.234 of 2019 in O.S.No.20 of 2022 dated 20.08.2024.



C.R.P.No.4310 of 2024

WEB COPY

2. The civil revision petitioner is the husband of the first respondent and the father of the second respondent.

3. Pleading that the civil revision petitioner did not maintain them, indigent original petition came to be filed in P.O.P.No.234 of 2019 on the file of the Special Judge, Family Court at Salem. The relief sought for in the suit was for declaration that the plaintiffs 1 and 2, namely, the respondents are indigent persons and to direct the civil revision petitioner to pay a sum of Rs.25,000/- per month as maintenance to the wife for her lifetime and Rs.25,000/- to the child till her marriage. They also sought for a sum of Rs.16,20,000/- being the past maintenance amount that the plaintiffs were entitled to 2016 onwards. They also sought for a charge to be created over the suit 'A' schedule mentioned property.

4. The specific plea in P.O.P.No.234 of 2019 in paragraph XXVII is that the plaintiffs are indigent persons and they do not own any movable or immovable property, except those shown in the B schedule. They pleaded that they have no income of their own nor had they entered into any sort of



C.R.P.No.4310 of 2024

WEB COPY

agreement with regard to the suit claim. Being unable to pay the court fees, they sued as indigent persons.

5. Notice was ordered to the petitioner including the District Collector of Salem. After following the necessary procedures, the court came to a conclusion that the plaintiffs are indeed in indigent circumstances paupers and therefore, granted permission to sue as an indigent persons on 18.07.2022. Thereafter, the suit came to be numbered and was taken on file as O.S.No.20 of 2022.

6. The husband has filed a written statement to the suit and the parties were pushed to trial. The first plaintiff/first respondent examined herself in chief and has marked Ex.A1 to Ex.A29. It was thereafter, listed for cross examination of PW1. At that stage, the first defendant/civil revision petitioner filed an application invoking Order XXXIII Rule 9 of the Code of Civil Procedure.

7. The prayer in the petition was to revoke the permission granted on 18.07.2022 by which the plaintiffs were permitted to sue as indigent



C.R.P.No.4310 of 2024

WEB COPY

persons. The claim of the civil revision petitioner was that the wife has 30 sovereigns of gold and the said fact had not been disclosed at the time of filing of P.O.P.No.234 of 2019. In addition, he also pointed out that the minor/second plaintiff has filed a suit for partition and separate possession in O.S.No.85 of 2023 before the learned Principal Subordinate Judge at Salem. In that suit, the second plaintiff had valued her share of the property as Rs.6,34,000/-. The plea of the civil revision petitioner was that as the plaintiffs are possessed of funds, they are not entitled to continue the proceedings as indigent persons. Hence, the petition for revocation. The learned Family Judge received this application as I.A.No.3 of 2024.

8. Notice was issued to the plaintiffs. The plaintiffs filed a counter to the said application pleading that they have no means to pay the court fee and the value of the immovable property in the partition suit is not sufficient to pay the requisite court fees. Insofar as 30 sovereigns of gold is concerned, it was pleaded that the said jewels are in possession of the first defendant/civil revision petitioner.



C.R.P.No.4310 of 2024

WEB COPY

9. The learned Trial Judge, after considering the affidavit and petition, came to a conclusion that the permission granted need not be revoked, as much water flown, after permission had been granted and that there was no change in circumstances justifying such revocation. Hence, he dismissed the petition. Aggrieved by the same, the husband is on revision before this Court.

10. I have heard Mr.P.Jagadeesan for the civil revision petitioner.

11. Mr.P.Jagadeesan argues that under Order XXXIII Rule 9 of the Code of Civil Procedure, the court, can revoke the permission granted to a party to sue as an indigent person at any time. Referring to 30 sovereigns of gold that the first plaintiff is in possession of and the valuation that has been given in O.S.No.85 of 2023 on the file of the learned Principal Subordinate Judge, Salem, he argues that the plaintiffs are not entitled to continue the suit in capacity of being indigent persons. He relies upon judgments of this Court in *Alagappa Chettiar v. Palaniappa Chettiar*, 83 LW 22 and *R.Jayaraja Menon v. Dr.Rajakrishnan and Another*, AIR 1998 KER 15



C.R.P.No.4310 of 2024

WEB COPY

and states that if a party is possessed of funds, then he or she is not entitled to sue as an Indigent person.

12. I have carefully considered the submission of Mr.P.Jagadeesan and have gone through the records.

13. I have to refer to Order XXXIII, which enables a party to file a suit as an indigent person. A person, who is incapable of paying the court fee is not barred, from presenting a suit for his or her claim. This is because the right to access a court being a part of Articles 14 and 21 of the Constitution of India, the lack of ability to pay court fees cannot be a ground to prevent a person from claiming a right through process of court. It was for that purpose Order XXXIII was brought into the Code of Civil Procedure. It is not, as of a right, that a person to present the suit as an indigent person.

14. Under Order XXXIII, an application has to be made seeking for permission to sue as an indigent person. At that stage, the court is entitled to examine the applicant and decide the issue, if it is not satisfied with the report of the Chief Ministerial Officer of the court in terms of Order XXXIII



C.R.P.No.4310 of 2024

WEB COPY

Rule 1A. Prior to granting such permission, the party has to demonstrate before the court that none of the conditions of Order XXXIII Rule 5 are attracted to the applicant.

15. Order XXXIII Rule 5 has several clauses. The first clause being a procedural one, where a petition has been filed without adhering to the requirements of the Order XXXIII Rule 2 and 3 of the Code. The next one is where the court come to a conclusion that the person is not an indigent person, or if he or she, two months prior to the presentation of the indigent petition, had alienated the property fraudulently in order to obtain the permission to sue as an indigent person. The remaining clauses being that the suit itself does not disclose any cause of action or if the party has entered into an agreement with reference to the subject matter of the suit with a third party and had obtained interest in the subject matter of the suit. The last being that the claim of the indigent person is barred by limitation and if the party has entered into a champertous agreement for the purpose of financing the litigation. If none of these conditions are satisfied, then Order XXXIII Rule 8 comes into effect. The court, if it is convinced on the



C.R.P.No.4310 of 2024

WEB COPY

evidence placed before it, that the party is an indigent person, then the permission is granted and the suit is taken on file.

16. The Code also contemplates a situation where it retains the power to revoke the permission granted to sue as an indigent person, if the conditions of Order XXXIII Rule 9 are satisfied. Normally the court fee is a matter between the party and the Court; the only person, who would be aggrieved in the matters of valuation and payment of court fee, is the State.

17. Order XXXIII Rule 9 creates an exception to the rule enabling an adversary to the indigent person to take out an application that the permission granted to sue as an indigent person must be revoked

(i) if the indigent person as guilty of vexatious or improper conduct during the course of the suit;

(ii) if it appears that the indigent person means are such, that he or she ought not to continue in the status of indigent person and

(iii) lastly, that if the party has entered into an agreement with a third party with respect to the subject matter of the suit and has obtained interest thereon.



C.R.P.No.4310 of 2024

WEB COPY

18. It is pertinent to note that when the Parliament enacted Order XXXIII Rule 9, it engrafted the condition under Order XXXIII Rule 5 (e) alone as a condition for withdrawal under Order XXXIII Rule 9(c). The other clauses have not been incorporated under Order XXXIII Rule 9. This is not far to see because it is possible that a party, after having filed a suit, could have entered into an agreement with other party on the basis of the pendency of the suit and obtained an interest in the suit property concerned. However, the Parliament did not include the condition in the other clauses, i.e., (a) to (d), (f) and (g) as grounds to withdraw the status of Indigent person.

19. A reading of the affidavit in the facts of the present case shows that the civil revision petitioner is not relying upon Order XXXIII Rule 9(a) or Order XXXIII Rule 9(c) to revoke the permission granted by the court.

20. Mr.P.Jagadeesan relies upon Order XXXIII Rule 9(b) of the code. My reading of Order 33 Rule 9(b) shows that it requires a proof from the adversarial party that the means of the indigent person has improved to such an extent that he or she ought not to continue as an indigent person. To put



C.R.P.No.4310 of 2024

WEB COPY

it in simple words, if a person who had secured permission to sue as an indigent and subsequently, comes across funds sufficient to sue as a regular party, then, the court should not continue to extend the benefit granted under Order XXXIII Rule 8 to such a party.

21. Now let me look at the circumstances which the civil revision petitioner pleads that his wife and daughter are not entitled to sue as indigent persons.

22. The first circumstance is that the wife is possessed of 30 sovereigns of gold. The counter of the wife regarding the said issue is that she is not possessed of the said jewels and it is in the custody of the civil revision petitioner. I should add here that the civil revision petitioner also denies that he is in the custody of jewels. If that be the situation, then the court cannot come to a categorical conclusion that the first respondent is possessed of jewels. Had the first defendant shown that the first plaintiff is in possession of such jewels, perhaps, the court might not have continued her status as indigent person. As no positive proof has been let in by the civil revision petitioner that the first respondent is possessed of jewels, I



C.R.P.No.4310 of 2024

WEB COPY

have to agree with the trial court that it cannot conclude that the status of the first respondent is of such a nature that she ought not to continue as an indigent person.

23. The second circumstance that Mr.Jagadeesan points out is the presentation of the plaint in O.S.No.85 of 2023 on the file of the Principal Subordinate Judge at Salem. This is a suit for partition and separate possession. For the mere fact that a person has presented a suit seeking partition does not mean that the plaintiff has come across the benefits that might accrue on the suit if decreed. Till the second plaintiff is granted a share in the property by way of a final decree and takes possession of the property, the property continues to be a mirage, insofar as the second plaintiff is concerned. The right over a property gets crystalised only when a preliminary decree is passed followed up with a final decree allotting a property to her and after the final decree, she takes possession of the property so allotted. Till she gets her hand over the property, she is not entitled to be treated as a person who has lost her indigent status. In other words, her right is subject to a decree that might be granted by the court.



C.R.P.No.4310 of 2024

WEB COPY

24. The father, who is fighting tooth and nail to ensure that his daughter is not treated as an indigent person will certainly, in case the partition suit is decreed, will continue it further if possible to take up the issue till the Supreme Court. This means there are several rounds of litigation before the daughter will come across the property. May be by the time, the partition suit is decreed, the minor would become major herself. I am making this observation for the purpose of showing that as on today, the second plaintiff has not yet got the property, which will change her status from that an indigent person to a person possessed of funds to pay the court fees.

25. It is now my duty to refer to the authorities cited by Mr.P.Jagadeesan.

26. The first of the judgments is that of the Hon'ble Mr.Justice Palaniswami in *Alagappa Chettiar v. Palaniappa Chettiar*, 83 LW 22. The facts of the case are necessary for the purpose of deciding this application. The plaintiff in that case had presented a suit before the Original Side of this Court. At the time of filing of an application under Order XXXIII Rule 1 of



C.R.P.No.4310 of 2024

the Code of Civil Procedure, he had suppressed his interest in a house property and that, he had sold his share in the suit property in favour of a third party for a considerable sum of Rs.9,500/-. The facts show on the date of presentation of indigent petition that the plaintiff was possessed of funds to pay the court fee and yet he did not pay the same.

27. The Hon'ble Mr.Justice Palaniswami took a view that if there has been a fraud played on the court, whether the property that has been omitted is of a little value or substantial one, matters not. He followed a previous judgment of this Court in ***Chellammal v. Muthulakshmi AIR 1945 MAD 296*** held that as the plaintiff had not come out with clean breast regarding the amounts that were available in his hands, he is not entitled to continue in the status of an indigent person.

28. There are two reasons why I cannot apply the said judgment to the facts of this case: the first one being unlike the case before Mr.Justice Palaniswami, there is no evidence before me to show that either plaintiffs are possessed of funds on the date on which they filed a petition under Order XXXIII Rule 1 and the said fact had been kept away from the Court.



C.R.P.No.4310 of 2024

WEB COPY

29. The second reason being the Code of Civil Procedure itself underwent an amendment in the year 1976, which came into effect from 01.02.1977 by Act 104 of 1976. By the said amendment, a proviso was introduced to Order XXXIII Rule 5 (c).

30. As pointed out above, Order XXXIII Rule 5(c) applies where a party, two months prior to the presentation of the plaint, has alienated a property, in order to obtain the permission to sue as an indigent person. The position of law, which prevailed from 01.01.1909 till 31.01.1977, was that if a party had funds in his hands and had kept away the fact of such funds from the court, then whether the amount was substantial or of little value, it mattered not. Such a party was not entitled to sue as an indigent person.

31. By Act 104 of 1976, the Parliament amended Order XXXIII Rule 5 and introduced a proviso to Order XXXIII Rule 5(c). By this proviso, the court is called upon to decide as if the amount realised from the alienation of the property by the applicant would still be less than the amount that has to be paid as the court fee. The Code of Civil Procedure holds that if the



C.R.P.No.4310 of 2024

WEB COPY

value realised would be less than the court fees payable, the indigent petition should not be rejected. The position of law having been changed by this amendment, the view taken by Mr. Justice Palaniswami cannot be applied after 01.02.1977.

32. Turning to the second judgment, ***R. Jayaraja Menon v. Dr. Rajakrishnan and Another, AIR 1998 KER 15***, that was a case which arose under Order XXXIII Rule 9 of the Code. The plaintiff had obtained permission to sue as an indigent person. Subsequently, on account of his retirement, he got substantial amounts as arrears of salary and other benefits from the Government. The said payments having come pending the litigation, the defendants took out an application under Order XXXIII Rule 9. The Hon'ble Mr. Justice P.K. Balasubramanyan (as his lordship then was) took a view that since substantial amounts had come into the hands of the plaintiff after the permission had been granted to sue as an indigent person, it attracts Order XXXIII Rule 9(b) of the Code and therefore, the plaintiff is not entitled to continue with the indigent status that he had sought for and had obtained.



C.R.P.No.4310 of 2024

WEB COPY

33. As pointed out above, there is no evidence to prove that the plaintiffs have come across substantial funds sufficient to pay the court fees after permission had been granted on 18.07.2022 enabling them to lose the status. A court while dealing with an application under Order XXXIII Rule 9 has to apply the words "means as such that they ought not to continue to sue as indigent persons". The interpretation to these words found under Order XXXIII Rule 9 requires the defendant/State to demonstrate before the Court that subsequent to the grant of an order of indigency, the beneficiary/plaintiff has come across funds sufficient to pay the court fees and hence, should not be permitted to continue with the status of indigency presented before it. Therefore, the view taken by the learned Judge is also inapplicable to the fact of the present case.

34. At this stage, I should refer to a judgment of this Court in ***Gadigi Muddappa and others v. Gadigi Rudramma, (1921) 13 LW 76 = AIR 1921 MAD 97***. In that case, the plaintiff had obtained permission to sue as an indigent person but during the pendency of the suit, she was benefited with a large sum of money. She pleaded that she had paid away the amount to a creditor and that, she continued to be in the status of an indigent person. The



C.R.P.No.4310 of 2024

WEB COPY

court refused to accept this plea on the ground that once it is ascertained that the party is not an indigent person, after the date of the application, the only order that the court has to pass is that she is not entitled to continue in that status.

35. The ratio of the said judgment is that on the date on which an application is filed under Order XXXIII Rule 9, the party who has secured the order of indigency would demonstrably have to be shown to have possessed funds sufficient to pay the court fee. It matters not whether the monies which, he or she, had obtained after the presentation of the plaint was used to discharge previous creditors or had been retained by herself. All that the court is concerned is whether the plaintiff has come across the means subsequent to the order of indigency.

36. As discussed above, none of the circumstances arises in the present case. The jewels are missing from the first plaintiff. The properties are not available with the second plaintiff and therefore, both are entitled to continue as an indigent persons.



C.R.P.No.4310 of 2024

WEB COPY

37. In the light of the above discussion, I am not inclined to admit this revision. Accordingly, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

05.11.2024

nl

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no

To

The Family Court at Salem.



WEB COPY



C.R.P.No.4310 of 2024

V.LAKSHMINARAYANAN, J.

nl

C.R.P.No.4310 of 2024

05.11.2024