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C.R.P.No.51 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2025

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.51 of 2019
and C.M.P.No.500 of 2019

Janakiammal (Deceased)

- 1.K.Ramakrishnan
- 2.K.Swaminathan
- 3.K.Selvi Alamelu

(Petitioners 1 to 3 brought on record
as legal representatives of deceased
sole petitioner by order of the Court
dated 20.06.2025 by VLNJ)

.... Petitioners

-Vs-

- 1.Pazhanivel
- 2.Kokila @ Kokilambal
- 3.Thangam

.... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India against
the fair and decreetal order dated 18.02.2016 made in O.P.No.4 of 2010 on the file
of the learned Principal Sub Judge, Pondicherry.

For Petitioner : Mr.S.P.Sudalayandi

For Respondent : Not ready in Notice - for R1
Served, No appearance - R2



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ORDER

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This Civil Revision Petition challenges the order passed by the learned Principal Subordinate Judge, Pondicherry in O.P.No.4 of 2010 dated 18.02.2016.

2. O.P.No.4 of 2010 had been presented for declaration of title and for recovery of possession from defendants 2 and 3 after removing the superstructure raised thereon and for costs. The Court fee payable by the petitioner is Rs.35,625.50/-. Pleading that she is not in a position to pay the court fee as she is advanced in age (85 years on the date of presentation of the plaint), she presented the Original Petition as an indigent person.

3. In the said O.P., the petitioner has pleaded that she does not own or possess any immovable property other than the subject matter of dispute. Notice was ordered to the respondents. The respondents had also engaged a counsel and resisted the application seeking to sue the *in forma pauperis*.

4. On 01.11.2014, the plaintiff entered the witness box and deposed in support of her pleadings. She has stood by the averments made in the petition. On the date of tendering of the evidence, the plaintiff / petitioner was aged about 91 years. During the course of cross examination, the learned counsel for the defendants had suggested that the plaintiff is wearing ornaments. The plaintiff had responded stating that they are made of artificial gold and are not gold articles.



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She also denied the suggestion that she owns an immovable property in Chennai.

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5. Learned trial Judge, by the impugned order, dismissed the petition holding that as the petitioner has not proved that the articles are not made of gold and further that she does not own any property, she is not entitled to sue *in forma pauperis*. Another reason given by the learned trial Judge is that there is non-compliance with Order XXXIII Rule 6 of the Code of Civil Procedure. Consequent to this discussion, the trial Court dismissed the petition. Hence, this revision.

6. I heard Mr.Sudalayandi for the petitioners. The respondents, though served, have not entered appearance before this Court. I have gone through the materials placed on record.

7. It is a settled position of law that a party can prove the positive aspect of the case and cannot be called upon to prove the negative. It is the assertion of the defendants that the plaintiff is possessed of funds. The burden then lies on the defendants to come up before the Court and give evidence to that effect. A perusal of the judgment of the trial Court shows no evidence has been let in by the defendants to disprove the financial incapacity of the petitioner. Shifting the burden of proof on the petitioner to disprove the allegations made by the defendants is to turn the law of evidence on its head.

8. Apart from that, under Order XXXIII Rule 6 of the Code of Civil Procedure,



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it is the duty of the Court to fix a date for hearing and direct the party to give notice to the Government Pleader. For that fact, the learned Government Pleader has not been put on notice, the Court need not have dismissed the application of the petitioner.

9. In the light of the above considerations, the order of the learned trial Judge in O.P.No.4 of 2010 dated 18.02.2016 is set aside. At this stage, a submission was placed by Mr.Sudalayandi. He states that the children of the original petitioner are not in a position to pay the Court fees. He states that if sufficient time is granted, the Court fees will be paid and the suit can be proceeded as a normal suit. Hence, the newly impleaded parties are granted time till **31.07.2025** to pay the Court fees. On payment of such court fees, the learned trial Judge is requested to number the suit as a regular suit and proceed in accordance with law.

10. This Civil Revision Petition is ordered accordingly. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2025

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Index : Yes/No
Neutral Citation : Yes/No
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To



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The Principal Subordinate Judge
Pondicherry.

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V. LAKSHMINARAYANAN, J.

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