



A.No. 4798 of 2023
in
CS. DR. No.111613 of 2023

MASTER
06.01.2026

1. This is an application filed by the applicant/plaintiff claiming permission to register the case filed by him as an indigent person.

2. The case of the applicant is that he is appointed as an executor of the Will of Lakshmi Ammal and as such he has filed the above suit for Judgment and decree against the defendants to declare the sale deed dated 27.02.1997 registered in Doc. No.212 of 1997 on the file of SRO Triplicane in favour of the 2nd defendant in respect of the plaint scheduled property as null and void, to declare the sale deed dated 19.11.1997 registered in Doc. Nos. 1160 and 1161 of 1997 on the file of SRO Triplicane in favour of 1st and 3rd defendants respectively by Munia Pillai in respect of the plaint schedule property as null and void and to declare the equitable mortgage of the schedule mentioned property by the 2nd and 3rd defendants along with others dated 20.06.2019 in favour of the 4th defendant as null and void. The applicant further stated that he has to pay total court fee of Rs.1,40,00,600/- as per the memo of calculation given in the plaint and he being the senior citizen aged about 71 years cannot do any work and though he was employed as a medical whole sale dealer on daily wages 15 years back, he has no savings at all. The applicant further stated that he is not in possession of any movable or immovable property and is not a beneficiary under the Will and the schedule mentioned



property bequeathed under the Will is meant for charity. Hence this application may be allowed.

3. Despite having entered his appearance the 1st respondent/1st defendant has not filed his counter. The 2nd and 3rd respondents have filed the counter stating that as per the plaintiff's own statement he was working as a medical whole sale dealer and the plaintiff had suppressed the fact that he had transferred all his assets in the name of his son and his daughter for the purpose of this suit. Further the plaintiff had been constantly represented by advocates in all stages from issuing legal notices to filing of probate OP and filing of above suit and nowhere he has stated that the same was done with the help of pro-bono advocates. The plaintiff possess sufficient means and so he is not entitled to claim the status of an indigent person.

4. The 4th respondent has filed his counter stating that the applicant has not filed any document to prove that he is an indigent person and lacks means to pay the required court fee as prescribed under the Act. The applicant has not produced any revenue document/certificate confirming his indigence as mandated by the statute. It is further stated that the applicant herein has paid entire court fee i.e., a sum of Rs.25,000/- in OP No.733 of 2019 to probate the Will, which was granted on 01.03.2021 by the Hon'ble High Court, which clearly illustrates that the applicant is taking double stand on hypocrite way to avoid payment of court fees and so this application is to be dismissed.



5. The 5th respondent/Government Pleader has filed a report stating that on enquiry conducted it is came to known that the applicant is living with his son at No.84 Athanur Village, M.G.R.Nagar, and is living a standard life.

6. Heard both side counsels. No oral or documentary evidence let in by both sides. The applicant has filed the suit to declare the sale deed dated 27.02.1997 registered in Doc. No.212 of 1997 on the file of SRO Triplicane in favour of the 2nd defendant in respect of the plaint scheduled property as null and void, to declare the sale deed dated 19.11.1997 registered in Doc. Nos. 1160 and 1161 of 1997 on the file of SRO Triplicane in favour of 1st and 3rd defendants respectively by Munia Pillai in respect of the plaint schedule property as null and void and to declare the equitable mortgage of the schedule mentioned property by the 2nd and 3rd defendants along with others dated 20.06.2019 in favour of the 4th defendant as null and void. Admittedly the applicant has filed the suit acting in the capacity of executor under the Probated Will under section 211 of the Indian Succession Act, 1925. Upon grant of probate, the entire estate of the testatrix vests in the executor, who represents the estate for all purposes. The present suit is instituted not in the personal capacity of the applicant, but in his representative capacity as executor, seeking to protect the estate property of the testatrix.

7. While considering the application under Order 33 of C.P.C the Court is bound to take into account all property over which the applicant has possession or



control, except exempt property as per explanation 1 to Rule 1. In the present case, it is admitted that the estate possess immovable property, namely the suit property itself. The fact that the property is the only property of the testatrix, that it is under dispute, or that it is bequeathed for charitable purpose, does not make the property outside the control of the executor nor does it exempt such property from consideration while assessing means. An executor cannot invoke personal indigency to avoid payment of court fee when the estate he represents has assets. Court fee has to be paid out of the estate even where the ultimate beneficiary is a charity.

8. Further, in the given case on hand, the applicant has failed to adduce any evidence to prove that the estate he represents do not have any movable or immovable assets. On the contrary, the fact that the applicant earlier paid court fee in probate proceedings and the pleaders report indicating a comfortable living status probablise the case of the respondents 2 to 4. It is well settled law that mere assertion of poverty is insufficient and an executor representing an estate with assets cannot be treated as an indigent person under Order 33 of C.P.C. Under such circumstances, since the applicant has not proved the petition averments by way of proper oral or documentary evidence, this Court is not inclined to entertain the petition.

In the result, this application is dismissed. No costs.

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