

## Arumbu Ammal Vs Elamathi and Others

**Court:** Madras High Court

**Date of Decision:** Dec. 12, 1980

**Citation:** (1981) ILR (Mad) 422

**Hon'ble Judges:** Ramanujam, J

**Bench:** Single Bench

**Advocate:** V.R. Venkataraman, for the Appellant; A.S. Venkatachalapathy, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

Ramanujam, J.

This appeal is directed against the order of the Subordinate Judge of Mayuram refusing to permit the Appellant herein to

sue as an indigent parson. The Appellant filed the suit for the recovery of possession of certain properties valued at Rs. 94,000 and the court-fee

payable on the claim comes to Rs. 7,025. In her application for leave to sue as an indigent person, the Appellant had claimed that she was not

possessed of sufficient means to pay the said court-fee of Rs. 7,025. However, after the filing of the application, she received a sum of Rs. 2,099

odd from the Life Insurance Corporation of India, representing the amount due to her on the life insurance policy taken by her husband, who died

just a few months prior to the filing of the application. However, the Appellant did not amend her petition for leave to sue as an indigent person,

bringing to the notice of the Court the factum of her having received the said sum of Rs. 2,099 from the Life Insurance Corporation. However, at

the time of the enquiry, when she was in the witness box, she admitted the receipt of the said amount, but stated that the amount was not sufficient

for the payment of the court-fee payable on the plaint. The Court below has held that, even though the Appellant had received the amount of Rs.

2,099 subsequent to the filing of her application for leave to sue as an indigent person, she should have brought it to the notice of the Court by

amendment of the petition, and the Appellant not having done, so, it should be taken that there was lack of good faith on her part and that,

therefore, the application for leave to sue as an indigent person cannot be sustained.

2. On a due consideration of the matter, I am of the view, that the order of the lower Court cannot legally be sustained. There is no dispute that at

the time, when the application for leave to sue as an indigent person was filed, there was no suppression of any material fact or non-disclosure of

any asset possessed by the Appellant. The sum of Rs. 2,099 was got by the Appellant nearly four months after the filing of the application. It is

also not in dispute that at the time of the enquiry the Appellant admitted the receipt of the sum of Rs. 2,099 both in her chief-examination and in

cross-examination. Therefore there was no attempt on her part to suppress the factum of the receipt of the amount. In those circumstances, I do

not see, how the Appellant can be considered to be guilty of suppression of any material asset in her original petition or in her evidence. It is not

possible to infer any lack of good faith on the part of the Appellant. If the insurance amount received by the Appellant, had exceeded the amount

payable as court-fee, then the Appellant may be disentitled to permission to sue as an indigent person. But admittedly the amount received by her

from the Life Insurance Corporation is quite insufficient for paying the court-fee payable on the plaint. If there was no suppression in the original

application filed by the Appellant with regard to any assets or any funds, then the sufficiency of the funds or the value of the properties may not be

relevant, and the mere fact that the amount alleged to be suppressed is far below the court-fee payable cannot be taken advantage of by the

person seeking leave to sue as an indigent person. But where there is no suppression at all, and long after the filing of the application the applicant

received certain amount which was quite insufficient to discharge her liability to pay court-fee, there is no question of the Appellant being deprived

of her right to get permission to sue as an indigent person.

3. In this view of the matter, the order of the lower Court has to be set aside and the Appellant has to be granted permission to sue as an indigent

person as prayed for by her in Original Petition No. 129 of 1976. The appeal is accordingly allowed. There will be no order as to costs.