(1952) 07 KL CK 0034

High Court Of Kerala

Case No: C.R.P. No. 644 of 1950

Chinnaswami Goundan		APPELLANT
	Vs	
Anthonyswamy		RESPONDENT

Date of Decision: July 24, 1952

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 32 Rule 8, Order 33 Rule 1, Order 33 Rule 2, Order 33 Rule 5, Order 33 Rule 6
- Cochin Limitation Act, 1908 - Article 9A

Hon'ble Judges: Vithayathil, J

Bench: Single Bench

Advocate: T.S. Venkiteswara Iyer, P.K. Subramania Iyer and C.S. Ananthaktishna Iyer, for the Appellant; A.S. Krishna Iyer and V.V. Subramania Iyer, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Vithayathil, J.
Defendant 1 is the revision Petitioner. The revision petition is from an order allowing a suit to be filed in ''forma pauperis''. The Plaintiff belongs to the Vannia Tamil Christian community in Chittoor. It is alleged in the plaint that the rules of the Hindu Mitakshara Law apply to the community so far as inheritance and succession are concerned. The suit is for setting aside a decree and court sale relating to the family properties of the Plaintiff and for partition of the same. The value of the suit is Rs. 1,89,700 and the court-fee to be paid is Rs. 1900/-.

The Plaintiff has appended to the petition a schedule of his assets which are valued at Rs. 8-12-0. Notice of the pauper petition was given to the State and it was submitted on behalf of the State that, the Plaintiff was not possessed of sufficient means to pay the court-fee required for the plaint. Defendant 1 objected to the petition being allowed. The main objections were that the Plaintiff had not disclosed all his assets in the petition, that the plaint did not disclose a cause of action and the

claim was barred by limitation. All these objections were overruled by the Court below and the Plaintiff was allowed to sue in ''forma pauperis''. The revision is from that order.

2. The three grounds urged by Defendant 1 in the Court below were urged here also With regard to the 1st ground the contention of Defendant 1 is that the Plaintiff has admitted when he was examined in the Court below that he is entitled to get a sum of Rs. 500 from his uncle as unpaid purchase money for a sale deed executed by him in favour of the latter. The Plaintiff has not included this in the schedule of assets appended to the petition. It is contended that this amounts to an intentional and fraudulent suppression of the assets of the Plaintiff and, therefore, a violation of the provisions of Order 33, Rule 2, Code of Civil Procedure.

That rule reads thus:

Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits:

A schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Rule 5 provides thus:

The Court shall reject an application for permission to sue as a pauper where (a) it is not framed and presented in the manner prescribed by Rr. 2 and 3.

It is argued that since the Plaintiff has not included in the schedule all his properties as required by Rule 2 the application cannot be said to have been framed in the manner prescribed by the rule and that, therefore, the Court was bound to reject it under Rule 5.

Reference was made to the rulings in Durga Prasad and Another Vs. Sriniwas Sureka and Another, Kuppuswami Naidu Vs. Varadappa Naidu and Others, and Chellammal Vs. Muthulakshmi Ammal, In the first case Courtney-Terrell C.J. observed thus:

It is most important that all applications for leave to sue or prefer appeals in ''forma pauperis'' should set forth with the utmost good faith, as the disclosure of the assets in insolvency proceedings, the whole of the assets of the applicant. It is the practice that notice of the application is sent to the Government Pleader in order that an investigation may be made by Government officials into the truth or otherwise of the applicant''s statements of fact and, therefore, it is incumbent upon the applicant to state with the utmost good faith all the necessary materials for such an investigation. If he merely states that he is a poverty-stricken individual with no assets but a few valueless articles and conceals the fact that he has interest in properties of however little ultimate value, it is impossible for the enquiry to be conducted with any efficiency. Therefore, it must be ''understood in future that if it

should be revealed in the course of the hearing of the .application that the applicant has not stated with utmost good faith the whole of his assets the application will be rejected at the very earliest stage.

3. In the second case, Chandrasekhara Iyer J. observed thus:

The argument that, even if the particular asset that has now come to light had been disclosed, it would not affect the question of the alleged pauperism of the applicant does not, take stock of the fact that the utmost bona fides are required of the Petitioner in the matter of the disclosure of his or her assets and that any intentional departure from good faith, whatever the motive might be, must attract the consequence of a dismissal of the petition, because under Order 33, Rule 2, read with Order 33, Rule 5(a), it is the bounden duty of the Petitioner to make a full and accurate verified Statement about his properties.

In the third case, the same view was expressed by Leach C.J., in the following words:

As was pointed out in Kuppuswami Naidu Vs. Varadappa Naidu and Others, the utmost good faith is required of the Petitioner in the matter of the disclosure of his or her assets and any intentional departure from good faith, whatever the motive may be, must result in the dismissal of the petition. Under Order 33, Rule 2 read with Order 32, Rule 8(a), Code of Civil Procedure. it is the bounden duty of" the Petitioner to make a full and accurate verified statement of his or her properties.

4. It was argued for the Plaintiff-Respondent that it is only in cases in which the non-disclosure of an asset by the Plaintiff amounts to an act of bad faith that the petition can be rejected under Order 33, Rule 8(a).

Reliance was placed on the rulings in Mt. Chamela Kuar Vs. Pursottam Das and Others, ; Mt. Jainatun Nissa Bibi and Another Vs. Mt. Idrakun Nissa, ; Bagala Sundari Devi Vs. Rivers Steam Navigation Co. Ltd. and Others, ; "Shankar Bhat v. Sakharam Bhat" AIR 1922 Bom 215 (G) and "Purushotham Kalliahji v. Mattanchery Roman Catholic Church" 35 mad 301 (H).

In Mt. Chamela Kuar Vs. Pursottam Das and Others, the decision in Durga Prasad and Another Vs. Sriniwas Sureka and Another, was considered and Kulwant Sahay J. observed thus:

It was never the intention of this Court to lay it down that if 1 or 2 wooden Chaukis or if a wooden box or a wooden almirah worth a few rupees had been left out such an omission will have the effect of rejecting the application without determination on merits. It must be found that there was a "mala fide" omission from the schedule of properties which would materially affect the question of pauperism. As I understand, the object of prescribing that the pauper should set out a list of his properties is to help the Government in ascertaining whether the applicant is in a position to pay the Court-fee payable on the plaint. It cannot be said that the omission of a few articles worth a few rupees which could in no way affect the

decision of the Court on the question of pauperism has the effect of throwing out the application on the ground that it does not contain a list of all the properties held by the Petitioner.

The same view was expressed-in Mt. Jainatun Nissa Bibi and Another Vs. Mt. Idrakun Nissa, . Bagala Sundari Devi Vs. Rivers Steam Navigation Co. Ltd. and Others, was a case in which the applicant sought to amend the application for permission to sue in ''forma pauperis'' by including an asset in the schedule which was omitted in the original application. It was when the applicant was examined that it was disclosed that he was entitled to a particular property. He filed a petition to amend the original application by including this asset also. The Subordinate Judge refused to amend the application as he was of opinion that under the provisions of Order 33, Rule 6(a) he had no other alternative than to reject the original application.

Mallik J. observed that the case was not one of deliberate suppression of an asset but only one of inadvertent omission and that there was nothing to prevent the Court from allowing the amendment.

In ''AIR 1922 Bom 215'' (G) the Plaintiff was allowed to sue in ''forma pauperis''. Subsequently it was found out that he had not included in the schedule of assets an endowment policy for Rs. 1000 and, therefore, he was dispaupered. The High Court held that, in view of the fact that the amount covered by the policy would become payable only at the end of the endowment period and that in case the premia were duly paid, it was possible that the Plaintiff did not consider the policy as a present asset or that it had a surrender value and that, therefore, it could not be said that he has been guilty of fraud in concealing the policy. It was found that the policy was worth Rs. 845. The court-fee required was Rs. 830. The High Court, therefore, set aside the order and the Plaintiff was allowed to continue the Suit as a pauper.

In ''35 Mad 301'' (H) a usufructuary mortgage right for Rs. 600 belonging to the Petitioner was not included in the schedule of assets. Subsequently he filed an affidavit to the effect that this omission was due to inadvertence. The court-fee payable for the appeal was Rs. 669-5-0. Following the decision in ''AIR 1922 Bom 215 (GV, Kunjunni Raja J. allowed the appeal to be filed in ''forma pauperis''. Reference may also be made to the decision of the Travancore High Court in ''Kunjamma v. Narayanan Nair 26 Trav LJ 763 (I) wherein it was held that when there is nothing to show that the omission of certain movables of small value belonging to the Petitioner was an act of bad faith on his part the application for permission to sue as a pauper should not be rejected on that ground.

5. According to learned Counsel for the Respondent two conditions will have to be satisfied before a petition for permission to sue in ''forma pauperis'' is rejected on the ground of non-disclosure of an asset. One is that the non-disclosure must have been intentional and must amount to a fraud on the Court, and the other is that the asset, when taken along with the other assets, if any, mentioned in the schedule, is

sufficient for payment of the required court-fee.

With regard to the second point I am of opinion that when there is an intentional and ''mala fide'' non-disclosure of an asset by the Petitioner in the application for permission to sue as a pauper the application cannot be said to be one in accordance with Order 33, Rule 2 and that, therefore, it is liable to be rejected under Rule 5(a), even if the asset suppressed is not sufficient for payment of the required court-fee. Of course, the value of the asset will be a material element that will be taken into consideration in determining the question whether the non-disclosure was intentional and ''mala fide''.

With regard to the first point, I do not think that in every case in which an asset is omitted in an application for permission to sue as a pauper the application should be held to be one not in accordance with Order 33, Rule 2 and, therefore, liable to be rejected under Rule 5(a). If the omission is not intentional and ''mala fide'' and even if the asset omitted is taken into account the Petitioner will be a pauper within the meaning of the explanation in Order 33, Rule 1, namely, ''one not possessed of sufficient means to enable him to pay the required court-fee'', I find no reason why the petition should be rejected under Order 33, Rule 5(a).

6. In the present case it was not stated by Defendant 1 in his objection to the petition of the Plaintiff that the Plaintiff was entitled to realise a sum of Rs. 500 from his uncle. It was only stated that the Plaintiff had not included all his assets in the schedule appended to the petition. When the Plaintiff was examined he stated that he had executed a sale deed in favour of his uncle and that he did not receive the consideration for it, namely, Rs. 500/-. In re-examination he stated that the uncle has not undertaken to pay the amount and that no amount is due from him. It is true that in the cross-examination he has definitely stated that a sum of Rs. 500/- was due to him from his uncle. It is however not clear from the deposition whether this amount is one for which he can establish a claim in a Court of law. The sale deed has not been produced in the case. It may be that it is stated in the sale deed that the whole consideration has been received, and even if the uncle has not paid the whole amount the Plaintiff may not be able to establish his claim in a Court of law and obtain a decree. In the circumstances it cannot be said that this is an asset for which any value can be given. There is no reason to hold that it was an intentional and ''mala fide'' act on the part of the Plaintiff not to have included this asset in the schedule appended to the petition or that he wanted to practice a fraud upon the Court. Since the court-fee required for the plaint is Rs. 1600 no useful purpose would be served by suppressing this asset which, even according to Defendant 1, is worth only Rs. 500/-. I, therefore, agree with the Court below in its view that the non-disclosure of this asset does not amount to a violation of the provisions of Order 33, Rule 2.

7. With regard to the second ground, the objection taken is that the allegations in the plaint do not disclose a cause of action. The Suit, as stated above, is for setting

aside a decree and court sale and for partition of family properties. The decree was, based on a pronote executed by the deceased fattier of the Plaintiff. The Plaintiff can sue to set aside the decree and the auction sale and for partition only if he has acquired a right in the family properties by birth under the Hindu Mitakshara Law. It is argued for Defendant 1 that the plaint does not contain an allegation to the effect that the Plaintiff has acquired a right in his family-properties by birth. The contention in para. 1 of the plaint is to the following effect: (Here follows extract in Malayalam).

It is argued that this statement only means that the rules of the Hindu Mitakshara Law relating to inheritance and succession only apply to the community to which the Plaintiff belongs and that it does not amount to an averment that the rules of the Hindu Mitakshara Law, by which a person to whom that law applies acquires a right in his family properties by birth, apply to the community to which the Plaintiff belongs. I think that this will be giving a very: narrow interpretation to the averment in the plaint. It is specifically alleged in the plaint that the plaint properties belong to the family consisting of the Plaintiff and Defendants 8 and 9, that the debt incurred by Defendant 8 was for immoral and illegal purposes, that the Plaintiff is entitled to a share in the properties, and that the decree and court sale are null and void and not binding on the family.

In the light of these specific allegations there is no substance in the contention that the plaint docs not contain an averment to the effect that the Plaintiff is entitled to a share in the family properties under the Hindu Mitakshara Law.

8. With regard to the third point, it is argued that since there is a prayer in the plaint for setting aside the court sale the suit brought more than one year after the Plaintiff attained majority is barred under Article 9A, Cochin Limitation Act. But the allegation in the plaint is to the effect that the decree and court sale are null and void and that the debt which is the basis of the decree was contracted for immoral and illegal purposes. In para. 9A it is stated: (Paras. 9A, 9B and 9K of plaint quoted).

It is alleged in the plaint the decree and court sale are null and void it may not be necessary to have them set aside. In such circumstances the prayer in the plaint for setting aside the sale will be only a superfluity. It cannot, therefore, be said that the suit is ''prima facie'' barred by limitation. It is, however, not necessary to decide this question at this Stage. It has been repeatedly held that in deciding the question whether the allegations in the plaint show a cause of action under Order 33, Rule 5(a) the Court should not go into intricate questions of law and fact which have to be decided in the suit itself. It is only in cases in which the allegations in the plaint do not on the face of the record show a subsisting cause of action that the Court can reject the application under Rule 5(a).

Reference may be made to ''Ramakrishna Iyen v. Sankaranarayana Pattar'' 10 Mad 131 (J): ''Meenakshi v. Kunhi'' 36 Mad 222 (K): ''Variathu v. John'' 23 Trav LJ 811 (L),

''Padmanabha Pillai v. Parameswaran Pillai'' 28 Trav LJ 340 (M) and ''Kurien v. Kurien'' 22 Trav LJ 903 (N) I do not think that the present case is one in which it can be held that the suit is on the face of the record barred by limitation and that the allegations in the plaint do not show a subsisting cause of action. The third objection also is, therefore, without substance.

9. In the result, I find no reason to interfere with the order of the Court below. The revision petition is, therefore, dismissed with costs.