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(1995) 11 KL CK 0045

High Court Of Kerala

Case No: M.F.A. No. 1020 of 1995

P. Unnikrishnan APPELLANT

Vs

Rugmini Unnikrishnan RESPONDENT

Date of Decision: Nov. 3, 1995

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 1

Hon'ble Judges: K.K. Usha, J; B.N. Patnaik, J

Bench: Division Bench

Advocate: K. Ramakumar, for the Appellant;

Final Decision: Dismissed

Judgement

B.N. Patnaik, J.

Petitioner in O.P. No. 88 of 1995, on the file of the Family Court; Ernakulam, is the appellant. He challenges the order passed by the Family Court rejecting his application for leave to sue as an indigent person under Order 33 of the Code of Civil Procedure. The suit proposed to be filed is one for a decree of declaration that the plaint schedule properties belong to the petitioner and also for an injunction against commission of waste and alienation by the respondent, who happens to be estranged wife of the petitioner/appellant. The suit properties are valued at Rs. 10,35,751.75/-. The court fee payable thereon is Rs. 76,381/-. It is contended by the appellant that the movable and immovable properties mentioned in the plaint are worth only Rs. 72,000/- and therefore he has no sufficient means to pay the prescribed court fee.

The respondent resisted the petition by stating that the appellant has sufficient means and is able to pay the required court fee.

2. The learned Judge observed that the petitioner has movable assets worth about Rs. 76,381/-. He owns 40 cents of land, the value of which would be not less than Rs. 80,000/- in his own estimation. He is employed as General Manager of a private

company and according to him he receives Rs. 3,500/- as monthly salary. He has a post office recurring deposit of Rs. 8000/- and is subscribing to an insurance policy. The fact that he, owns valuable movables would show that he is having sufficient income. Even without alienating his movable assets or immovable properties, he is in a position to pay the required court fee by pledging the insurance policy or mortgaging the immovable property or by selling the whole or a portion of his landed property. It is further found that even it he been permitted to sue as an indigent person in another case, the same is not binding on this court and more over the order passed therein is under challenge in a pending appeal. He being not an indigent person has to pay the prescribed court fee.

3. Learned counsel for the appellant has contended that there is no rule under Order 33 of the CPC prescribing that a person should sell his property and pay court fee to save another property. The Family Court failed to notice that a competent civil court has already found that the appellant is an indigent person. The findings in the present case and that of the other court are contradictory. The court below has failed to appreciate the relevant principles of law in holding that the appellant is a person who is possessed of sufficient means to pay the court fee.

4. The only point for consideration is whether the appellant can be held to be an indigent person in terms of Explanation I to Order 33 Rule 1 C.P.C. It reads as follows:

Explanation I--A person is an indigent person,--

(a) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

It consists of two parts. The first part lays down that when a fee is prescribed then the applicant who desires to invoke O.33 C.P.C. should not be possessed of sufficient means to pay the fee, other than the property exempt from attachment in execution of a decree and the subject-matter of the suit. The second part deals with cases where no fee is prescribed. In that case, he must not have property worth more than Rs. 1,000/- other than the property exempt from attachment in execution of decree, and the subject-matter of the suit. The expression "sufficient means" came up for consideration in a number of decisions of this Court as well as other High Courts. In Janakykutty v. Varghese (1969 KLT 953); Xavier v. Kuriakose (1987 (1) KLT 176) and Prabhakaran Nair v. Neelakantan Pillai (1987 (2) KLT 376), it has been precisely laid down that what is contemplated is not mere possession of property but sufficient means, that is, capacity to raise money to pay the court fee. If the property in the possession of the plaintiff is not sufficient to raise money to pay the

requisite court fee, he should be deemed to have not been possessed of sufficient means to pay the court fee. If, on the other hand, he is in possession of property sufficient to enable him to raise cash for payment of the court fee, he can be deemed to have sufficient means to pay the court fee and he cannot therefore be considered to be an indigent person. It means that he should have sufficient means to pay the court fee after meeting the basic requirement of the life. Total destitution is not a pre requisite to seek justice. The capacity to raise money is the crux of the matter and this turns firstly, on convertability of the property into cash readily and secondly, the capacity to dispose of property for this purpose.

5. The appellant has staked his claim for property worth more than rupees 10 lakhs with a view to deprive his wife of exercising any right over it. Admittedly he owns 40 cents of valuable land, receives Rs. 3,500/- per month as his salary regularly, has a deposit of Rs. 8000/- in the Post office besides some valuable movables. It cannot be denied that the value of the land which is in his exclusive possession is worth more than Rs. 70,000/-. There is no evidence to show that he will be rendered homeless, if he raises funds either by disposing of the same or by mortgaging it. In view of his steady monthly income, he will not be placed in penury condition if he parts with this land to gain property worth Rs. 10 lakhs. It is not his case that he would be incapable of earning anything or that he would be left with no property to depend upon in case he converts this land into liquid cash. In our opinion, learned Judge has rightly found that he has sufficient means to pay the court fee, either by pledging or or mortgaging his movables and immovables. He will be still able to meet the basic requirements of life from the monthly salary which he gets as a General Manager of a private company. He cannot therefore be considered to be an indigent person. For the reasons stated above, we find that the appeal is devoid of any merit. The same is, therefore, dismissed in limine.