

(2010) 08 MAD CK 0281

Madras High Court

Case No: C.R.P. (PD) No. 3677 of 2009 and M.P. No. 1 of 2009

Dr. Mohana Balusamy

APPELLANT

Vs

N. Gomathi

RESPONDENT

Date of Decision: Aug. 20, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 1, Order 33 Rule 2

Citation: (2011) 1 CivCC 353 : (2011) 3 MLJ 891 : (2011) 1 RCR(Civil) 329 : (2011) 1 RCR(Civil) 329**Hon'ble Judges:** K. Mohan Ram, J**Bench:** Single Bench**Advocate:** N. Manoharan, for the Appellant; D. Balachandran, for the Respondent No. 1, for the Respondent

Judgement

K. Mohan Ram, J.

Second Respondent in P.O.P. No. 19 of 2005, on the file of the Subordinate Court, Bhavani, is the Petitioner in the above Civil Revision Petition.

2. The First Respondent herein filed the above Petition, seeking leave to file a Suit as indigent person. From the Affidavit filed in the said Petition, it has been stated that the First Respondent is not possessed of sufficient means to pay the necessary Court Fees on the Plaint and he has no other property other than the suit property. The First Respondent herein cannot raise any funds from out of the said suit property. The Petitioner herein contested the application, by filing a Counter Affidavit, inter alia alleging that the First Respondent is entitled to get one share out of 18 shares in agricultural lands situated in R.S. No. 544/2 (total extent of 8 Acres) of P. Mettupalayam Village, Gobichettipalayam Taluk. It was the case of the Petitioner that the share of the First Respondent's agricultural property would be worth about Rs. 1,00,000/- as on date. It is further stated in the Counter Affidavit that the First Respondent is also holding Saving Bank Account No. 1967 with Indian Overseas

Bank, Kavindapady Branch and from which, the Petitioner had also withdrawn a sum of Rs. 31,000/- on 25.01.2005 from her Savings Bank Account. She further contended that the First Respondent had also received the sale proceeds from the Second Respondent on 18.09.2002, 22.12.2003 and 25.02.2004 and had issued receipts, Exs. A1, A2 and A3 respectively. But the aforesaid facts have been deliberately suppressed by the First Respondent in the Petition. Therefore, he sought for dismissal of the Petition. The Court below allowed the said Petition. Being aggrieved by the order of the Court below, the Petitioner is before this Court.

3. Heard the learned Counsel for the parties and perused the materials available on record.

4. Placing reliance on Order 33, Rule 2 of Code of Civil Procedure., which reads as follows:

R.2. Contents of application.- Every Application for permission to sue as an indigent person shall contain the particulars required in regard to Plaints in Suits and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings." Learned Counsel for the Revision Petitioner submitted that the Application for permission to sue as an indigent person shall contain the schedule of movable or immovable property, if any, belonging to the Applicant, with the estimated value thereof.

5. Learned Counsel for the Petitioner also submitted that the person seeking to sue as an indigent person should disclose the details of movable and immovable assets, belonging to him, bona fide, and if any suppression of the possession of movable and immovable property by him is found out, the prayer cannot be granted to him to sue as pauper. If he discloses the value of the immovable property, he has to be de-pauperised.

6. Learned Counsel for the Petitioner further submitted that in the Counter Affidavit, the Petitioner has stated that the First Respondent has withdrawn a sum of Rs. 31,000/- on 25.01.2005 from her Savings Bank Account No. 1967 from Indian Overseas Bank, Kavindapady Branch. The said fact has not been denied, whereas, in the Reply Affidavit filed by the First Respondent, he has stated that the said amount has been utilised for Medical expenses. In support of his said contention, he placed reliance on the following judgments in [S.K. Samy and Sons and Others Vs. S. Moorthy and Others](#), , D. Hemachandra Sagar v. D. Prithviraj AIR 2004 Kar. 33, Devilal v. Narmadabai 1999 AIHC 1689, and [P.V. Chandrasekharan and Others Vs. Thirumalai Chit Funds and Others](#), .

7. Responding to the said submission, learned Counsel for the First Respondent submitted that the amount received from L.I.C., has been utilized by the First Respondent for medical expenses and the said amount cannot be utilized for payment of Court Fees. He further submitted that the contention that the First Respondent has one share out of 18 shares in agricultural lands in R.S. No. 544/2

(total extent of 8 Acres) of P. Mettupalayam Village, Gobichettipalayam Taluk, has been specifically denied by the First Respondent in reply Affidavit and that no document was produced to substantiate the claim of the Petitioner. He also submitted that the receipt of the sale proceeds from the purchasers under Exs. A.1 to A.3 is disputed and they cannot be relied upon. 8. In the decision reported in [S.K. Samy and Sons and Others Vs. S. Moorthy and Others](#), paragraphs 14 and 15, it has been held as follows:

14. Proceedings initiated by a Plaintiff under Order 33, Rule 1, CPC would be decided on the basis of pleadings. Order 33, Rule 2 provides for disclosing the entire movable and immovable properties of the Plaintiff along with its estimated value. The Plaintiff is also to sign and verify the pleadings. The intention of disclosing the entire property of the Plaintiff in a Suit was to decide the matter on the basis of such relevant materials. The Court was also expected to issue notice to the Collector, as ultimately, State is the sufferer. Therefore, the Collector also plays a predominant role in the matter of deciding an Application for exemption from payment of Court Fee.

15. The statutory requirement of disclosing the entire property of the Applicant in the schedule is not an empty formality. The Applicant was expected to disclose the entire details with respect to his property, so as to enable the Court to take a decision in the matter. In case the Court was apprised of the fact that the entire property of the Applicant was not disclosed in the Petition filed under Order 33, Rule 1, such applications would be liable for summary dismissal." 9. The very same principles are reiterated in other decisions relied on by the learned Counsel for the Petitioner. In the light of the aforesaid principles, the facts of the present case have to be analysed and considered.

10. Though the learned Counsel for the Petitioner contended that the First Respondent has got one share out of 18 shares in agricultural lands in R.S. No. 544/2 (total extent of 8 Acres) of P. Mettupalayam Village, Gobichettipalayam Taluk, there is no documentary evidence to prove as to whether the First Respondent has got share in that property.

11. Insofar as the amount stated to have been received by the First Respondent under Exs. A-1 and A-3 in relation to the sale of the property, which is the subject matter of the Suit, it is the specific case of the First Respondent that she has not received any sale consideration and the receipts thereon. Viz., Exs. A-1 to A-3 are not genuine and that therefore, those documents cannot be taken into consideration at this stage.

12. But as far as the contention of the learned Counsel for the Petitioner, regarding availability of the funds in the Savings Bank Account of the First Respondent is concerned, it is to be pointed out that the same has been established beyond reasonable doubt. In the Counter Affidavit it is specifically stated the First

Respondent is holding Saving Bank Account No. 1967 in Indian Overseas Bank, Kavindapady Branch and that the First Respondent had also withdrawn a sum of Rs. 31,000/- on 25.01.2005 from her Savings Bank Account. Whereas, P.O.P., has been filed on 19.01.2005 and as such, on 19.01.2005 a sum of Rs. 31,000/- was very much available in the Savings Bank Account of the First Respondent. That being so, it is incumbent on the part of the First Respondent to disclose the availability of a sum of Rs. 31,000/- in her Savings Bank Account. Admittedly, the First Respondent has not disclosed the availability of the said amount in his Savings Account in the Original Petition. Therefore, it clearly amounts to suppression of facts and does not satisfy the requirements of Order 33, Rule 2. In such circumstances, the Court below ought to have considered those aspects and given findings. The observation of the Court below that the amount in the said Savings Bank Account has been utilized for Medical expenses by the First Respondent, cannot be accepted. Hence, non-declaration of the assets by the First Respondent cannot be considered to be correct.

13. The Court below ought to have seen as to whether, on the date of filing of the Petition, the First Respondent was in a position to pay the Court fees. The Court fee payable on the Suit claim is Rs. 30,000/-, whereas, a sum of Rs. 31,000/- was available in the said Savings Bank Account. But this aspect has not been considered by the Court below, simply because the First Respondent had no sufficient means to pay the required Court Fee, at the time of filing of the Suit, it cannot be said that he will never be able to pay the Court fee at any point of time. Therefore, the reasonings of the Court below in this regard is erroneous and the order passed by the Court below, permitting the First Respondent to sue as an indigent person, is set aside. The Civil Revision Petition is allowed.

14. Learned Counsel for the First Respondent submits that ten weeks' time may be granted to the First Respondent to pay the necessary Court Fee and accordingly, the First Respondent is ordered to pay the Court fee on the suit, within a period of 10 weeks from today, failing which, the P.O.P. No. 19 of 2005, stands dismissed.