
(1998) 02 MAD CK 0038
In the Madras High Court

Dhandapani Udayar and Another

APPELLANT

Vs

Annammal and Others

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

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

Citation : (1998) 2 LW 331 : (1998) 3 MLJ 83

Judgement

1. The appeal has been preferred against the order dated 21.9.1993 in O.P.No. 34 of 1991 refusing to permit the plaintiffs to sue as paupers.

2. The suit is for recovery of possession. The court fee required to be paid is Rs. 5,625.75. The appellants stated that they are not in possession of

the property. Thus they have no means to pay the court fees. The counter was filed by the respondent contending that they have obtained a decree

on the file of the Munsif Court, Tiruvannamalai in O.S.No. 173 of 1991 on 6.11.1992. The learned Subordinate Judge who passed the order on

21.1.1993, had taken note of this decree and held that since they are in possession treated as indigent persons. Hence he rejected the claim of the

petitioners. In this revision petition, the learned counsel for the petitioner vehemently contended that mere obtaining a decree is not possessing the

means to raise funds. According to him, obtaining a decree for possession of a property does not mean that the appellants are in possession of the

property itself. They have to initiate execution proceedings to recover possession. Only thereafter, they will be in a position to raise money. 3.

After the counter was filed, nothing, prevented the petitioners from filing a reply by stating that even though they have obtained decree on

6.11.1992, it has not become final, in view of any appeal preferred. Therefore it is clear that they have possessed a decree which could be

executed. As per O.33, Rule 1 of the Code of Civil Procedure, the requirement is possession of means and not possession of property. Property

is one of the means to raise funds. A decree can also be treated as means for raising funds. The Explanation I to Rule 1 reads as follows:

"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.

What the court is concerned with is whether the person is in possession of sufficient means. In my view, possession of a decree is also

possession of means.

3. I do not find any infirmity in the order of the trial court. Hence, the Civil Miscellaneous Appeal is dismissed. No costs, However, the appellants

are granted three months" time for payment of court fee. Consequently, CMP.No. 2471 of 1994 is closed.