

(1994) 07 MAD CK 0020

In the Madras High Court

Case No : Appeal Against Order No's. 384 and 385 of 1986

G. Selvamani and 6 Others and M. Ganesan

APPELLANT

Vs

M/s. Ee India Corporation Ltd.

RESPONDENT

Date of Decision : 13-07-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 2, Order 33 Rule 5

Citation : (1994) 07 MAD CK 0020

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Advocate : V. Balasubramanian, for the Appellant;

Judgement

Govardhan, J.—These two appeals arise out of a Common Order passed by the Learned First Additional Subordinate Judge, Madurai

dated 18.2.1986 in (Indigent Person) O.P. No. 236 and 237/82 filed under Order 33, Rule 1 of Code of Civil Procedure. The petitioners have

filed these petitions contending that they do not have sufficient means to pay the Court Fee and therefore, they may be permitted to file the suit as

indigent persons.

1A. The respondents in their counter have contended that the petitioners are having both movable and immovable properties and they are running a

transport service and their Buses are running in Two or Three routes and they are worth more than Rs. 5 lakhs. The respondents have contended

that the petitioners can get sufficient funds to pay the necessary Court Fee on the security of these buses and the petitioners have sufficient means

to pay the Court Fee and therefore the petitions may be dismissed.

2. On the above pleadings, the trial Court has held a common enquiry and has

come to the conclusion that the petitioners have failed to prove that they are indigent persons and that they do not have sufficient means to pay the necessary Court Fee and rejected those petitions.

3. Aggrieved over the same, the petitioners have come forward with these appeals.

4. The point for consideration in both the appeals is: Whether the appellants do not have sufficient means to pay the necessary Court Fee?

5. Point; The Learned Counsel appearing for the appellants would argue that the respondents who contends that the petitioners are not indigent

persons and have got movables and immovable properties, have not let in any evidence and there was no direction to the Government Pleader or

the Tahsildar for proving that the petitioners are not having sufficient means to pay the necessary Court Fee and therefore, the appeals should be

allowed. The trial Court has rejected the claim of the petitioners on the basis of the documentary evidence produced by the petitioners itself will

show that the petitioners are income tax assesseees and when once they have got buses which are in running condition, the value of the route itself is

worth more than Rs. 5 lakhs and the petitioners have also received compensation in E.P. No. 33/1983 in M.C.O.P. No. 93/1979 on the file of

Fourth Additional Subordinate Judge (Motor Accidents Claims Tribunal) Madurai and therefore, they are not entitled to file the suits as indigent

persons.

6. As per Order 33, Rule 1 of Code of Civil Procedure, a person is an indigent person if he is not possessed of sufficient means other than the

property which is the subject matter of the suit among other things, to enable him to pay the fee prescribed by law, or where no such fee is

prescribed, if he is not entitled to property worth one thousand rupees other than the property which is the subject matter of the suit among other

things. As per Order 33, Rule 5 of Code of Civil Procedure, the Court shall reject an application for permission to sue as an indigent person,

where the applicant is not an indigent person among other things.

7. The trial Court has rejected the petitions of the petitioners holding that they are not indigent persons and therefore, it has to be held that it is an

order of rejection made by the lower Court under Order 33, Rule 5 of Code of Civil Procedure. It is only where the Court has no reason to reject

the application on any of the grounds stated in Rule 5, it shall fix a day of which at least ten days clear notice to be given to the opposite party and

Government Pleader for receiving such evidence as the applicant may adduce in proof of his being an indigent person and for hearing any

evidence this may be adduced in his proof thereof. Therefore, the ground of attack of the order of the lower Court as argued by the Learned

Counsel appearing for the appellant that the Court has not given notice to the Government Pleader or the Tahsildar to show that the applicant is not

possessed of sufficient funds to pay the necessary Court fees and therefore the order of the lower court is liable to be set aside is not convicting

and acceptable.

8. The question now before us is whether the finding of the trial Court that the applicant is not an indigent person for the purpose of rejecting the

application is valid or not. As per O. 33, R. 2 of Code of Civil Procedure, the particulars required in regard to plaintiffs and also a schedule of

movable or immovable properties belonging to the applicant, shall be mentioned in the application for permission to sue as an indigent person. The

petition filed by the petitioners contains the particulars in the plaint with the schedule of properties. A reading of the plaint would show that

Marimuthu Nadar father of the petitioners, had purchased certain properties for Rs. 72,000/- and when it was held as an invalid sale, in the suit

filed against him, he had fought the matter upto the Supreme Court and when the Supreme Court has also dismissed his appeal, he has filed a

Review Petition and it is said to be pending before the Supreme Court. When a person purchases certain property for Rs. 72,000/- and had faced

trial on account of the same as such in the trial Court appellate Court and lastly in the Supreme Court and still fighting the same by filing a Review

Petition, it cannot be stated that the said person or his legal representatives who is continuing the fight are indigent persons as per Explanation 2 of

O. 33, R. 1 of Code of Civil Procedure.

9. A copy of the petition/plaint filed in O.P. No. 237/1982 no doubt does not show any other property other than the wearing apparel. But the

copy of the petition/plaint in O.P. No. 236/1982 filed by the legal representatives of the deceased Marimuthu Nadar would disclose an extent of

35 and 5/8 cents of land in Uthamapalayam taluk and half share in Thirumal

Alagu Transport (Private) Limited at Theni owning two buses as the property of the petitioners. By no stretch of imagination, it can be stated that persons owning two buses of which one is stated to be running and the persons who are owning an extent of 35 and 5/8 cents of land are indigent persons who cannot pay a court fee of Rs. 6309-50 as per the particulars given in the plaint. Whether the petitioners are the share-holders of the Transport Company or not, they have got some interest in the buses and it is needless to observe that even the route has got some value and value of the buses both running and not running is always there. In the above circumstances, the finding of the trial Court that the petitioners have failed to prove that they are indigent persons and therefore, not entitled to file the suit as indigent persons is well-founded and it cannot be disturbed on the ground that there was no notice to the Government pleader or the Tahsildar as argued by the Learned Counsel appearing for the appellants. I hold on the point accordingly. In the result, the appeals are dismissed.