

(1983) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 5681 of 1980

Gade Sreeramulu

APPELLANT

Vs

Matta Adinarayana Rao and Others

RESPONDENT

Date of Decision : 26-08-1983

Acts Referred:

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

Citation : AIR 1985 AP 62

Hon'ble Judges : Rama swamy, J

Bench : Single Bench

Advocate : V.L.N. Gk. Murthy, for C. Poornaiah, for the Appellant; P. Raja Gopala Rao, for the Respondent

Judgement

1. The petitioner is the plaintiff. He is seeking to revise the impugned order of the lower appellate Court permitting the respondents to file the appeal as indigent persons under O.44, R.1 of the Civil P.C. 1908. It held that the respondents are indigent persons possessing no means to pay the requisite Court-fee.

2. It is not in dispute that the petitioner lent money to the respondents on executing a mortgage bond and for recovery thereof, the petitioner filed the suit and the trial Court passed a preliminary decree. As against that preliminary decree, the respondents filed the appeal as indigent persons and the lower Court permitted them to file the appeal as such.

3. In this revision, Sri Murthy, learned counsel for the petitioner contended that the respondents have been in possession of the mortgage property, they have an equity of redemption; they could raise the necessary funds by either selling the property or by further hypothecating to third party to pay the requisite Court-fee and that therefore they cannot be said to be indigent persons. On the other hand, learned counsel for the respondents contended that the respondents are not possessed of any other property except the property which is subject-matter of the suit, and since the property is subject to a mortgage and also since there

is already a decree nobody would come forward to lend money on the already mortgaged property. Therefore the respondents are indigent persons.

4. In order to appreciate the rival contentions it is necessary to have close look at the relevant provisions of the Code. O.33, R.1 C.P.C. would apply to the enquiry contemplated under O.44, R. 1. Order 33, R.1 postulates that a suit may be instituted by an indigent, person, subject to the provisions of the Order. Explanation I stated that:

"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) (The other provisions are not necessary for consideration. Hence they are omitted.)

5. The contention is that the words subject-matter of the suit would not take within its ambit the equity of redemption and that therefore it cannot be said that the respondents are not possessed of sufficient means to pay the requisite Court-fee. In support thereof, the petitioner relied upon Subodh Chandra v. K.L. Bank Ltd., AIR 1941 Cal 659. No doubt, a Division Bench of the Calcutta High Court held that the equity of redemption is not the subject-matter of the suit. Much water carrying constitutional goals has flown under the bridges in the years followed. But the question is whether the respondents can be said to be possessed of sufficient means. As already stated, it is not in dispute that except the house the respondents do not possess any property and the said property is the subject-matter of the decree under appeal. The object of O.33, R.1 and O.44, R.1. is to enable the indigent person to lay an action in a Court to vindicate his rights and when he proves that he is not possessed of sufficient means to pay the requisite Court-fee, an enablement is provided by the Code permitting him to prosecute the proceedings without paying the court-fee.

6. In this regard it is pertinent to remember that the people of India have heralded a Constitution unto themselves and assured equality of opportunity in securing justice social, economic and political. It is axiomatic to state that majority of people are poor and are not possessed of sufficient economic viability. It is one of the directives of the Constitution under Art. 39-A that equal opportunity shall be provided to the citizen to secure justice. To achieve the same, it directs that State shall secure the operation of legal system to promote justice on a basis of equal opportunity.....by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Disability to pay the requisite court-fee stands as an impediment to secure justice to the indigent person. In implementation of this directive, the Parliament brought in amendment to Explanation I (a) of R. (1) O.33, through S. 81 of the CPC (Amendment) Act, 1976, introducing that the property, subject of attachment in

execution of a decree and the subject-matter of the suit are considered to be exempt to person claiming to be an indigent person. Keeping these changes in constitutional perspectives and statute, I have to consider whether the property in possession of the respondents, the subject of the decree could be considered to be in possession of the respondents. As already stated, except the house the respondents are not possessed of any other property to pay the requisite court-fee. Therefore, the question that arises for consideration is, whether "the house" subject of the decree under appeal can be "the subject-matter of the suit." The capacity of the owner of the property to raise the requisite funds is the criterion. The concept of possession is to be broached from this perspective. The hypothecation of the property and a preliminary decree thereon constitute clog for the creditor to come forward to lend and stand an impediment for the owner to secure the funds except at the pain of loss. From this background to make the constitutional and statutory benefit meaningful and the legal remedy effectual, the clause "the subject-matter of the suit" is to receive extended meaning. Therefore, liberal interpretation is called for. In view of the above constitutional goals the statutory intendment in bringing about the amendment and the facts of the case, I am of the view that liberal construction has to be adopted in construing the words "subject-matter of the suit" so as to effectuate the above goal and the object of the statute. As stated earlier, admittedly there is a preliminary decree passed in respect of the house, the subject-matter of the suit. Though the respondents are in possession of the house, since it is already subject of the decree, if it is considered to be the subject-matter of the suit, then the respondent would be under heavy pressure either to part with the property or to further encumber the property at disadvantageous terms to secure the requisite court-fee. Under those circumstances, I am of the view that broad construction is called for in construing the words "subject-matter of the suit" and if so construed, I am of further view that the house, subject of the mortgage, should be exempt from the subject-matter of the suit as provided under Explanation I (a) of R. (1) of Order 33.

7. In *Manicka Chetty Vs. Narayanasami Naidu and Others*, and *Devaki and Others Vs. Rajagopal Naidu*, , the Madras High Court took the view that equity of redemption, the subject-matter of the redemption suit has to be excluded from "the subject-matter of the suit", under S. 33, R.1, C.P.C. With great respect to the learned Judges, I am entirely in agreement with them and I extend the ratio laid down therein also to the facts in this case. Therefore, I hold that the equity of redemption by the mortgage property in a suit for recovery of money on the basis of the mortgage is exempt from the subject-matter of the suit as contemplated under Explanation I (a) of R.1 of O.33. C.P.C. In that view, the lower Court did not commit any material irregularity or error of jurisdiction in permitting the respondents to file the appeal as indigent persons. Accordingly, the revision petition is dismissed, but in the circumstances, without costs.

8. Petition dismissed.