

(1996) 10 AP CK 0065

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 104 of 1991

Kakkirala Someswara Rao

APPELLANT

Vs

Gogula Sanyasi Setty and Others

RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

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

Citation : (1997) 3 ALT 489 : (1997) 3 CivCC 543

Hon'ble Judges : B.K. Somasekhara, J

Bench : Single Bench

Advocate : R.S. Murthy, for the Appellant; C. Poornaiah, for Respondent Nos. 1 to 3 and The Govt. Pleader for Civil Supplies, for the Respondent

Final Decision : Allowed

Judgement

B.K. Somasekhara, J.—The Order of the II Additional Sub-Judge, Kakinada in OP. No. 31 of 1988 dated 22-10-1990 holding that the appellant is not the indigent person for the purpose of Order 33, Rule 1 of CPC in regard to the exemption to pay the Court fee is challenged in this appeal.

2. The appellant/petitioner filed the suit in forma pauperis against the respondents. He pleaded that he was handicapped to pay the Court fee of Rs. 2446/- on the plaint. The plea of the indigent person was disputed by the respondents. An enquiry was held into the controversy. The appellant examined himself as P.W.1 and his father as P.W.2 and the 1st respondent examined himself as R.W.1 and a witness as R.W.2 and Exs.B-1 to B-3 were marked for the respondents in addition to Exs.X-1 and X-2 and none for the appellant. The appellant claimed to be a hawker having no sufficient income to pay the Court fee. He testified that P.W.2 his father paid him Rs. 9,000/- in lieu of his share in the family properties and beyond that he has no other properties. P.W.2 also testified that whatever properties P.W.I had and got from his father under a will, he disposed them of and therefore there is no property which the appellant can make use of to raise funds to pay the Court fee. The learned Sub-Judge felt that

the alleged partition between the appellant and his father P.W.2 is not established, P.W.2 is having substantial extent of agricultural lands and the appellant has suppressed the fact of his having substantial property to raise the funds and therefore, he is not an indigent person.

3. The learned Counsel for the appellant has contended that even taking all the evidence on record in the manner the learned Sub-Judge has understood, it only means that there is some property with P.W.2 and not with the appellant at any cost and therefore as per the true implications of Order 33, Rule 1 of C.P.C., the meaning of "possessed" should be understood to such an extent that the person claiming to be an indigent person must be capable of using it for raising the funds to pay the Court fee. In this regard, he depended upon *A. Muralidhar v. Soshamma* AIR 1956 AP. 31, *Asha Devi Vs. Devi Dayal and Another*, , *A. Prabhakaran Nair Vs. K.P. Neelakantan Pillai*, , *Indrasan Vs. Lucknow Nagar Mahapalika and Others*, , *Mala Devi Vs. Priyamani Devi*, and *Mandam Abdul Sattar Saheb Vs. H. Abdul Hakeem and Others*, . *Muralidhar's* case (supra) and *Sattar Saheb's* case (supra) supports the contention of the learned counsel for the appellant. The implications of Order 33, Rule 1 CPC is that the person claiming to be an indigent person should not be possessed of sufficient means, to mean that there is no capacity to him to raise the money or the actual money or funds to pay the Court fee. Neither the subject matter of the litigation nor the property with other persons including the other members of the family nor elsewhere would be relevant to decide such a question. The true implication of the provision is that at the relevant time, a person claiming to be an indigent person ought to be incapable of raising sufficient funds from any means to pay the Court fee and not otherwise. The finding of the learned Sub-Judge that P.W.2 the father of the appellant, owns nearly Ac.13-95 guntas of land as can be gathered from certain documents, is totally irrelevant. There is no finding to the effect that the appellant is possessed of any such means so as to enable him to raise the funds to pay the Court fee. To interpret Order 33, Rule 1 of CPC in any other manner in regard to the expression "sufficient means" would defeat the very purpose of the provision. Particularly, in this case, when the appellant claims to be a hawker having pledged the gold of his wife and presuming that he has some share in the property of his father, P.W.2, on the face of it cannot be said that he is a person who is in possession of the property. There is also nothing to indicate when Rs. 9,000/- were given to him and whether it is still available with him for the purpose of using it to pay the Court fee at the relevant time. In that view of the matter, the finding and the order of the learned Sub-Judge cannot satisfy the requirements of Order 33, Rule 1 of CPC and deserves to be set aside.

4. On going through the order of the learned Sub-Judge and also the evidence which is made a reference therein, it is apparent that the parties are not directed towards the proof of the implications of Order 33, Rule 1 of C.P.C. and either they misdirected themselves or that the Court had not directed them to concentrate on the question. In that view of the matter, the matter should go back to give a

clear finding with regard to the "sufficient means" of the appellant to pay the Court fee, in the light of the observations made above and to be decided afresh. It is also necessary for the appellant to prove that he has no sufficient means to pay the Court fee and there must be a clear finding on that question.

5. The Appeal is allowed. The Order of the learned Sub-Judge is set aside. The matter is remitted back to the learned Sub-Judge for disposal afresh according to law after giving opportunities to both sides to lead evidence and adduce arguments. Since the matter is very old, the learned Sub-Judge is directed to dispose of the petition within three months from the date of communication of a copy of this order. There shall be no order as to costs in this appeal.