

(1926) 10 MAD CK 0020
In the Madras High Court

Kathari Ramachandra Raju (died) and Others	APPELLANT
Vs	
Dandu Venkiah and Others	RESPONDENT

Date of Decision : 11-10-1926

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1927 Mad 441 : 101 Ind. Cas. 18 : (1927) 52 MLJ 330

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—This is a civil revision petition filed by the petitioners whose application for leave to sue in forma pauperis has been

rejected by the District Munsif under Order 33, Rule 5(d) of the C.C.P.

2.A preliminary objection has been taken on behalf of the respondents that no revision petition lies u/s 115 of the C.P.C. against such an order.

The wording of Section 115 of the C.P.C. is in my opinion comprehensive enough to cover a case of this kind, and if authority is needed, it is clear

that there have been a number of cases decided by this Court in revision which show that such petitions have been entertained as sustainable u/s

115 without any demur. The Full Bench decision of this Court in Rathnam Pillai v. Pappa Pillai (1902) 13 MLJ 292 (FB). is a clear authority

showing that the High Court interfered with a similar order passed by the Lower Court in revision, when it found that the order showed an illegal

exercise of jurisdiction by the Lower Court. To the same effect are the decisions reported in Govindasami Pillai v. Municipal Council,

Kumbakonam 34 MLJ 399. and Polimati Mungadu v. Nalla Bapadu (1923) 18 LW 53. At any rate the trend of decisions of this High Court

shows that a revision petition does lie against an order of the Lower Court rejecting an application of this kind. Reference was made by the

respondents' vakil to the decision in Mahadeo Sahai v. Secretary of State for India in Council which follows a previous Full Bench decision of that

High Court. A different view seems to have been entertained by that Court, but with due respect I am unable to follow the view adopted therein, in

consideration of the clear decisions of this High Court and also the long course of practice adopted here.

3. The next question to be considered is whether the order of the District Munsif rejecting the application is one passed illegally in the exercise of

his jurisdiction as contended on the petitioners side. In this case it is found by the District Munsif himself that the pauperism of the petitioners has

been made out. There is no ground to dismiss the application under Clause (b) of Rule 5 of Order 33, C.P.C. Clause (d) gives jurisdiction to the

Court to reject an application where the allegations made in that application do not show a cause of action. The scope of this clause has been

considered in more than one decision of this High Court. The non-existence of a cause of action should appear clearly on the face of the application

itself, which alone would justify the Court in rejecting the application. The Court would be acting without jurisdiction if it should travel beyond the

four corners of the application and take into consideration matters not stated therein or consider any document or other evidence in order to

determine whether there is a cause of action or not. Such a course would be legitimate in the actual trial of the suit on the merits. This is the view

taken in all the three decisions of this High Court referred to above. In the present case, what the District Munsif has done is to take into

consideration an agreement referred to in the plaint but not filed before him and to surmise upon its admissibility in evidence without having before

him the actual document itself for a proper construction of its terms and to hold that the document would probably be inadmissible in evidence and

therefore the plaintiffs would have no cause of action. It is obvious that the way in which the District Munsif has dealt with this application is

unwarranted by the Code and I should think on a consideration of the allegations set forth in the plaint that the agreement dated the 21st of

December 1920 is the basis for the cause of action in this suit. The validity or otherwise of that agreement has to be determined later on in due

course. The present case is not one covered by Clause (d) of Rule 5 of Order 33 of the Code of Civil Procedure.

4. In the result, the order of the District Munsif is set aside and the application is ordered to be numbered and registered as a suit in forma

pauperis. The petitioners' cost of this petition should be paid by the respondents.