
(1995) 01 MAD CK 0002
In the Madras High Court
Case No : C.R.P. No. 211 of 1990

Nallakannu Chettiar

APPELLANT

Vs

North Veerava Nallur Vanniar Samuthaya Sangam

RESPONDENT

Date of Decision : 21-01-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 33, 5

Citation : (1995) 01 MAD CK 0002

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Advocate : D. Rajagopal, for the Appellant; R. Thenmozhi, for the Respondent

Judgement

A.R. Lakshmanan, J.—Heard Mr. D. Rajagopal, learned counsel for petitioner and Ms. R. Thenmozhi, learned counsel for the

respondent. The petitioner herein filed O.P. No. 11 of 1982 on the file of District Munsif, Ambasamudran to declare him as a pauper and permit

him to sue against the respondent as an indigent person. The said O.P. 11 of 1982 was opposed by the respondent contending that the petitioner is

not a pauper and he has got means to pay the court fees. It is also contended that the said claim is barred by Limitation and also hit by res judicata.

Aggrieved by the said order dated 14-2-1983, the petitioner has filed C.M.A. No. 25 of 1983 on the file of Subordinate Court, Tenkasi, dated

23-6-1986. Aggrieved by the said order in C.M.A. 25 of 1983, the revision petitioner filed this CRP No. 211 of 1990 and obtained interim stay

on 22.2.1990 in C.M.P. No. 2216 of 1990. In my opinion, the order of both the Courts below are absolutely erroneous and are, therefore, liable

to be set aside. The Supreme Court in the case of Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another, has held as follows:

By the express terms of Order 33, Rule 5, Clause (d) the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed, it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true, no case is made out for granting relief, no cause of action would be shown and the petition must be rejected. The Court cannot take into consideration the defences which the defendant may raise upon the merits, nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact.

The same is the view taken by the learned single judge of our High Court in *Rajendran and Others Vs. Rajambal Ammal and Others*, which is as follows:

It is well settled that if the allegations of the applicant prima facie disclose a cause of action, the Court ought not to embark upon the consideration of a complicated or doubtful question of law or fact that may arise upon the allegation of the applicant for the purpose of determining whether the allegations show a cause of action, for, it is contrary to the scheme and the provisions of O. 33 that the court for the purpose of disposing of an application for leave to sue in forma pauperis should decide issues affecting the merits that properly and fairly can be determined at the hearing of the suit, The Court is not bound to go beyond the facts apparent on the face of the petition or plaint and the court has to look into the allegations made by the applicant and should not enter into the merits or demerits of the claim, but it has to decide the question from the allegation found in the petition or plaint itself.

2. In the present case, both the courts below have indulged in considering merits and demerits of the contentions with reference to the plea of limitation and res judicata and, in my opinion, the Courts have no jurisdiction to embark upon such roving enquiries in regard to these two issues which is a matter for trial. The court is expected to go into the question as to whether the petitioner had made out a case for granting permission to sue as an indigent person. Therefore, the orders of the Court below in O.P. 11 of 1982 dated 14-2-1983 before the District Munsif,

Ambasamudran and the order of the Subordinate Judge, Tenkasi in C.M.A. No. 25 of 1983 dated 23-6-1986 are set aside and the matter is

remitted to the file of District Munsif, Amabsamudram for fresh consideration of the claim of the petitioner in regard to the status as an indigent

person. The lower court shall also dispose of the said issue as a preliminary issue within three months from the date of receipt of the copy of this

order either from this Court or on production of the same by the petitioner, whichever is earlier. Accordingly, this CRP is allowed. However, there

will be no order as to costs.