

(1960) 12 MAD CK 0027
In the Madras High Court
Case No : C.R.P. No. 1795 of 1959

Ponnusami Maistry alias Ponnusami Pillai	APPELLANT
Vs	
V.V. Venkatarama Chetty and others	RESPONDENT

Date of Decision : 21-12-1960

Acts Referred:

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

Citation : (1960) 12 MAD CK 0027

Hon'ble Judges : Kunhamed Kutti, J

Bench : Single Bench

Advocate : P. Kothandaraman, for the Appellant; R. Ramamurthi Ayyar, C.S. Swaminathan and R. Shanmugam, for the Respondent

Final Decision : Allowed

Judgement

Kunhamed Kutti, J.—This civil revision petition is against the order of the learned Subordinate Judge of Salem, dismissing the petitioner's application O. P. No. 156 of 1958 for leave to sue in forma pauperis. The petitioner had executed a trust deed dated 1st October, 1946, authorising seven persons nominated there under to sell his properties and discharge his debts. He is said to have revoked the trust deed on the ground that the trustees had not properly administered the trust, but on the other hand, had acted in violation of the terms of the trust deed, and had thus rendered themselves liable to account to him, In the plaint filed along with the application for leave he prayed, among other things, for declaration that he had validly revoked the trust deed and the alienations by the trustees are void, invalid and not binding on him for possession of the several items of properties and for accounting from the trustees. On the valuation of the several relief's claimed in the plaint the court-fee payable is a sum of Rs. 23805-50 nPs. The petitioner alleged that he has no sufficient means to pay the court-fee, that though he is possessed of the house in the plaint B Schedule and has obtained a decree against one Lourdusami for Rs. 81,000 odd, he was unable to raise any money on the house property, that the decree obtained against

Lourdusami is under appeal and that even the amount deposited by the judgment debtor in connection with his stay application could not be withdrawn as he was unable to furnish security to the satisfaction of the Court.

2. All the defendants in the plaint 37 number are respondents to the petition also. They include the trustees, creditors and alienees of the petitioner. Several of them contested the application for leave. The substance of their contention was that the petitioner had ample properties and assets out of which he could pay the requisite court-fee and therefore he was not entitled to the leave prayed for. In particular, they pointed out that the B Schedule house which is still in the possession of the petitioner and has not been handed over to the trustee, is worth Rs. 40,000, and contains furniture and vessels worth about Rs. 3000, that he owns house-sites worth Rs. 30,000 in Kichipalayam, Salem Town, subject to a mortgage of Rs. 10,000, and that he has lands worth Rs. 5,000 in Pudukottah limits.

3. The learned Subordinate Judge was not inclined to accept the case of the contesting respondents regarding the moveable and vessels, house sites in Salem Town and the lands in Pudukottah limits as being available to the petitioner for the purpose of raising funds for payment of court-fee. He, however, found that the house in the possession of the petitioner is worth Rs. 40,000 and that no steps had been taken by the petitioner to raise funds on this house or for withdrawing the Rs. 20,000 in Court deposit, that if he had done so, he would have had sufficient means to pay the necessary court-fee and that in the circumstances he could not be considered to be a pauper. He, therefore, dismissed the petition with costs of the respondents. This civil revision petition is directed against the said order.

4. The legal position is beyond controversy. Though the petitioner is possessed of considerable properties, the case has to be considered with reference to Cl. (a) of the Explanation to R. 1 of O. 33, C. P. C. This Clause is to the effect that "a person is a pauper when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in a suit." The words "sufficient means to enable him to pay court-fee" are not equivalent to "possessed of sufficient properties to enable him to pay the court-fee"; in other words, possession that is spoken of in the Explanation is not possession of property but of sufficient means. What the Court is concerned therefore is not actual possession of properties but the capacity to raise money necessary to pay court-fee. This is one aspect. The other aspect is that Cls. (a) and (b) of the Explanation being disjunctive, where there is a fee prescribed in the plaint it cannot be said that the subject-matter in dispute can in no circumstances be taken into consideration on the question whether the plaintiff is possessed of sufficient means to enable him to pay court-fee. On the other hand, it is for the Court to consider in each case whether such subject-matter should or should not be excluded. Keeping in view these two aspects, we have now to consider whether the petitioner is possessed of sufficient means to pay court-fee required

for his plaint by reason of his being in possession of the B Schedule house included in the plaint and also by reason of the amount deposited by the judgment-debtor Lourdusami. Dealing first with the house in the possession of the petitioner, it is not Seriously disputed that it is worth about Rs. 40,000. Though this house is included in the trust deed and the trust is said to have been revoked by the petitioner, no doubt the question of its validity would be in issue, but it is the petitioner's case that he is competent to deal with the property in his own right. In the circumstances, just because it is included in the plaint, it cannot be left out of account in considering whether the petitioner is possessed of sufficient means. The question however is whether he is able to raise any funds on his property. The petitioner is prepared to alienate this property if any of the respondents is prepared to offer him sufficient money. No one is prepared to do so. On the other hand, it would appear from the counter statement of the 4th respondent that no one will advance money on this property. The main ground on which the learned Subordinate Judge negated the petitioner's claim for being adjudged a pauper is that he had not taken steps to raise funds on this property it would appear that there were attachments on this property to an extent of Rs. 7000 and an equitable mortgage had also been created by the petitioner in respect of certain borrowings made by him. After Lourdusami deposited Rs. 20,000 as a condition precedent to the stay of execution of the decree against him, the petitioner offered the very house as security before the Subordinate Judge, Tiruchirapalli, first on 26th May, 1959, and again on 1st February, 1960. On both the occasions, the Court found that the security was not sufficient and proper for the sum of Rs. 20,000. The orders rejecting the security have now been produced by the petitioner. No doubt, these orders were passed subsequent to disposal of O. P. No. 156 of 1958. But in the peculiar circumstances of this case, I am directing the same to be admitted in evidence. The second order rejecting security dated 11th March, 1960, appears to have doubted the title of the petitioner to the property and the learned Subordinate Judge took the view that even if the petitioner has title, mortgages in favour of Radhakrishna Chettiar and Venugopala Mudaliar are still subsisting and therefore the house cannot be deemed to be proper and adequate security for the amount which the petitioner wants to withdraw. Whatever be the merits of this observation, the point is whether in the face of the above observation and in view of the trust deed the validity of which is in question the petitioner could have raised funds by sale, mortgage, or otherwise, sufficient to pay the requisite court fee. On a consideration of all the circumstances of the case I am inclined to hold that it is not possible for the petitioner to raise any substantial sum on the security of the house in question. The resultant position is that while he is unable to raise any funds on the house in his possession, he has also not been able to withdraw the amount deposited by Lourdusami. It is not mere ability in the abstract but ability to raise money in the circumstances of the particular case in order to pay the requisite fee that has to be taken into consideration in determining whether the petitioner is possessed of sufficient funds.

6. It would appear that in the appeal preferred by Lourdusami the petitioner filed a memo of cross-objections claiming a further sum of Rs. 25,000. He sought leave to file this memo of cross-objections in forma pauperis and the order of this Court in C. M. P. No. 2699 of 1959 shows that leave prayed for was granted to him, on a finding recorded by the Second Additional Subordinate Judge, Tiruchirapalli. The learned Subordinate Judge found on enquiry, that the petitioner is not possessed of sufficient means at present within the meaning of O. 33, R. 1, Explanation (1-a) of the CPC and that until the contingency of his withdrawing the amount in Court deposit happened, his incapacity to deposit the requisite court-fee has to be recognised. I should mention here that the court-fee payable on the memo of cross-objections was only Rs. 1072-8-0. The order of this Court in the civil miscellaneous petition and the finding of the learned Subordinate Judge, Tiruchirapalli, have also been produced by the petitioner in C. M. P. No. 6305 of 1960 allowed by me today. I am satisfied that the petitioner is not possessed of sufficient means to pay the requisite court-fee in this case and therefore he is entitled to the leave prayed for. Accordingly I allow this civil revision petition, set aside the order of the lower Court and allow O. P. No. 156 of 1958 with costs throughout.