

(2015) 08 MP CK 0006
In the Madhya Pradesh High Court
Case No : W.P. No. 5091 of 2014 (O)

Raju Kaushal and Others

APPELLANT

Vs

Sumitra

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1
Constitution of India, 1950 — Article 227
Court Fees Act, 1870 — Section 35

Citation : (2015) 4 MPLJ 97

Hon'ble Judges : S.R. Waghmare, J.

Bench : Single Bench

Advocate : J.B. Dave, for the Appellant; S.K. Chourasiya, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Waghmare, J.

Shri J.B. Dave, learned Counsel for the petitioners.

Shri S.K. Chourasiya, learned Counsel for the respondent.

1. By this petition under Article 227 of the Constitution of India, petitioners Raju Kaushal and Shashi Kaushal are aggrieved by the order dated 6-1-2014 passed by XIIIth Civil Judge Class I, Indore in Civil Suit No. 3/13. Briefly stated the facts of the case, Counsel for the petitioner has vehemently urged that the respondent, was not noticed regarding the application moved for conducting the suit as an indigent person. The impugned order, permitting the plaintiff to sue as an indigent person, was passed without giving sufficient opportunity of hearing to the petitioners/respondents. That the plaintiff/respondent Yashpal had purchased a house bearing No. 177-A situated at Gadriya Mohalla, Labriya Bheru, Indore by registered sale deed dated 14-12-1995. The petitioners Raju Kaushal and Shashi Kaushal, are the younger brothers of Yashpal Kaushal, who died early, and the present respondent Smt. Sumitra Bai is the widow of Yashpal Kaushal. The

petitioners were living on rental basis in these two rooms and on the death of Yashpal Kaushal, Smt. Sumitra, the present respondent took over the house and being the close legal heirs the petitioners/respondents Raju Kaushal and Shashi Kaushal were paying Rs. 1,000/- and Rs. 2,000/- per month respectively. Subsequently due to irregularities in payment of the rent respondent Smt. Sumitra asked them to vacate the premises. Hence, plaintiff Smt. Sumitra did not wish to continue their tenancy. She also stated that the rent of Rs. 3,000/- per month, which was paid to her husband Yashpal Kaushal, is stopped by the petitioners/respondents.

2. Consequently quarrel arose between the parties and the petitioners/respondents threatened to the plaintiff Smt. Sumitra and a report was filed at police station on 26-6-2012. However, on the presentation of the plaint, the plaintiff has also stated that she is a widow lady and there is no income for her livelihood and hence she prayed for exemption from payment of the Court fee on the basis of the M.P. State Government Notification No. 9-1-93-B-21 dated 1-4-1983, according to which any female person earning less than Rs. 6,000/- per year is exempted from payment of the Court fee. Counsel however, urged the fact that no application has been moved by the plaintiff to sue as an indigent person despite the order of exemption from payment of Court fee. Counsel submitted that misstatement has been made by the plaintiff that the plaintiff is an indigent person. A report is not being called and straightway the plaintiff has been allowed to sue as an indigent person. Counsel submitted that such an order is contrary to the provisions of law which requires at least preliminary enquiry be held and it should be considered that whether the plaintiff was an indigent person, but nothing has been done. Counsel prayed that the provisions of Order 33, Rule 1 of the Civil Procedure Code have not been complied with, despite objection, by the petitioners/respondents and the impugned order has been passed. The certificate of the Tehsildar relied on by the plaintiff as well as the Trial Court was not very reliable and no opportunity of cross-objection has been given to the present petitioners/respondents. Hence, Counsel prayed that the impugned order be set aside.

3. Per contra, Counsel for the respondent/plaintiff has vehemently opposed the submissions put forth by the Counsel for the petitioners/respondents. He submitted that the application had not been moved under Order 33, Rule 1 of the Civil Procedure Code and under section 35 of the Court Fees Act. The benefit has been given straightway as per Notification dated 1-4-1983 issued by the State Government. Placing reliance on Mohammad Sadik and Others Vs. Khursheed Ahmed, whereby this Court has categorically held thus:

"Benefit of exemption from payment of Court fee: on plaint by certain categories of persons, enquiry to be conducted by the Court in a limited manner. Plaintiff belonging to one of the categories mentioned in the Notification is required to present the plaint by making such a declaration in the plaint itself for grant of exemption and need not file the suit as indigent person along with application

seeking exemption from payment of Court fees."

4. Counsel further relied on Ram Kishan Balmukund Kushwaha Vs. Devilal Nandram Kushwah, whereby this Court has held thus:

"Exemption from payment of Court fees, suit by plaintiff whose income was less than Rs. 6,000/- for declaration, partition and possession of his share in suit property and injunction and annual income of plaintiff immediately proceeding date of presentation of suit was less than Rs. 6,000/-. Plaint is of nature on which Court fee is payable in accordance with Article 1-A of First Schedule and plaintiff is exempted from payment of Court fees in view of exemption under the Notification."

5. Hence, Counsel submitted that the petition is without merit and the plaintiff had no way pleaded as she was an indigent person and pleaded that she is a lady and did not earn Rs. 6,000/- per year and had no income for her livelihood. Hence, Counsel prayed for dismissal of the petition.

6. On considering the above submissions, I find that the single question for adjudication as whether the impugned order is correctly discarded the objection of the present petitioners regarding the plaintiff not having fulfilled the provisions of Order 33, Rule 1 of the Civil Procedure Code as to sue as an indigent person? I find that the contention of the Counsel for the petitioners is contrary to the facts of the case. The application did not call to sue as an indigent person, but the applicant claims for exemption from Court fees as per the Notification dated 1-4-1983 and proper certificate of the Tehsildar has been filed.

7. In view of the above, I find that the pleas of the petitioners are way off the question in hand. The order passed by the trial Court is in accordance with section 35 of the Court Fees Act and the Notification issued by the State Government. Besides, there is also competent certificate of the Tehsildar regarding the earning capacity of the plaintiff being below Rs. 6,000/- per year and in this light also the order does not call for any interference. With the aforesaid observations, the present petition is dismissed as without merit.

C.C. as per rules.