

(1991) 01 MAD CK 0077
In the Madras High Court
Case No : C.M.A. No. 903 of 1990

S. Natarajan and others

APPELLANT

Vs

Bala and United India Insurance Co. Ltd., Erode

RESPONDENT

Date of Decision : 02-01-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 2

Citation : (1991) 01 MAD CK 0077

Hon'ble Judges : Srinivasan, J

Bench : Single Bench

Advocate : P. Sankaranarayanan, for the Appellant; S.P. Subramaniam for First Respondent and Mr. R. Vedantam for Second Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasan, J.—This appeal is directed against an order rejecting an application filed by the appellants for filing the suit as indigent persons under O.33, R.1, C.P.C. The appellants have stated in the petition filed before the Court below that they are not owning any movable or immovable properties of their own except the property described in the plaint schedule. The plaint schedule describes only two dhoties, two shirts and four skirts. Nothing has been mentioned in the plaint schedule but when P.W. 1 was examined in the course of the proceedings it was admitted by him that his wife died in an accident and he got provident fund amount of Rs. 10,000/-. He also admitted that he got in all a sum of Rs. 13,000/- and that his two children were getting Rs. 458/- per mensem. No reference was made whatever to the said amounts in the petition for leave to file the suit in forms a pauperis. In such circumstances, the appellants have not disclosed the full particulars of their proper ties in the petition. In Chellammnal v. Muthulakshmi Ammal 1945-1-MLJ 53 D.B. = ILR 1945 628 (Madras Series) = 58 L.W. 21 a Division Bench of this Court has held that under O.33, R.2, C.P.C., read with R.5(a) thereof, it is the bounden duty of the petitioner to make a full and accurate verified statement of his or her properties. They have also affirmed the

judgment in Kupuswami Naidu v. Varadappa Naidu 1942-2-MLJ 345 = 55 L.W. 561 (1) in which it has been held, this utmost good faith is required of the petitioner as to the matter of the disclosure of his or her assets and that any intentional departure from good faith whatever the motive may be, must result in the dismissal of the petition.

2. It is contended by Learned Counsel for the appellants that the date on which P.W. 1 got the amounts are not brought out on the record. According to him, even though in the cross examination it was elicited by the respondents that the appellants got Rs. 13,000/- in all and Rs. 458 (sic) mensem for the two children, it is not shown to the Court that P.W. 1 got the amounts prior to the filing of the petition or at the time of filing of the petition. This argument cannot be accepted. It is the duty of the appellants to have disclosed the relevant dates. They should have placed before the Court the material facts and pointed out that the amounts which they got earlier had already (sic) been spent or that they had not received the amount (sic) then. When once it is brought out in the evidence that they had other amounts available with them the non-disclosure thereof is sufficient to (sic) vitiate the application for leave to file the suit in (sic) pauperis. Hence the order of the Court below is unsustainable. This civil miscellaneous appeal (sic) is dismissed. No costs.