

(1943) 07 MAD CK 0015
In the Madras High Court

Subramaniam Pillai and Another

APPELLANT

Vs

Kavundappa Goundan and Others

RESPONDENT

Date of Decision : 15-07-1943

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 6

Citation : AIR 1943 Mad 663 : (1943) 56 LW 426 : (1943) 2 MLJ 177

Hon'ble Judges : Horwill, J

Bench : Division Bench

Judgement

Horwill, J.—The petitioners filed an application in the Court of the Additional Subordinate Judge of Coimbatore to sue in forma pauperis.

After notice to the respondents and examining certain documents produced by the parties, the learned Additional Subordinate Judge came to the

conclusion that the mortgage on which the petitioners wished to sue had been discharged. He therefore dismissed their application, although he

found that in fact they were paupers and unable to pay the court-fee....

2. If the Court is to dismiss an application to sue in forma pauperis on the ground that there is no subsisting cause of action, it must be able to draw

that conclusion from the allegations in the plaint itself. It may be permissible to read with the plaint the documents referred to in the plaint, but the

Court should not travel beyond the plaint and perhaps these documents. The learned advocate for the respondents says that the learned

Subordinate Judge has not done that; but it does appear from the very long discussion of the learned Additional Subordinate Judge that he thought

that he was at liberty to consider any evidence that might be adduced bearing on the question that was in issue between the parties and to come to

a summary conclusion on which would depend the question whether he should admit or dismiss the application. Such is not the case. It is true that

under the present Rule 6 of Order 33, Civil Procedure Code, the Court is bound to admit evidence dealing with any of the questions that may be

raised under Rule 5; but Rule 6 cannot have the effect of altering the meaning of Clause (d) of Rule 5. So, whatever evidence may be let in, the

Court must consider whether there is a cause of action or not only upon the allegations in the plaint together with the documents referred to in it.

3. The question, however, still remains whether this Court should interfere in revision. The legislature has provided no appeal from such an order

and therefore this Court will not interfere unless it considers that the interests of justice require it. The discussion of the learned Judge has at least

shown that the plaintiff's case has serious defects; and it also appears that the father of the family, who is also entitled to sue on the mortgage and

who could probably pay the court-fee, is keeping in the background and putting forward his sons to file the present application.

4. Under these circumstances, I do not think that the interests of justice require interference in revision. The petition is dismissed with costs.