

(1953) 04 MAD CK 0059

In the Madras High Court

Case No : Civil Revision Petition No. 376 of 1950

Thunoli Kelu Nair

APPELLANT

Vs

Nambron Chirutheyi Amma and Others

RESPONDENT

Date of Decision : 08-04-1953

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 33 Rule 1

Citation : AIR 1954 Mad 76 : (1953) 66 LW 792

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : D.A. Krishna Variar, for the Appellant; O.T.G. Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

Ramaswami, J.—This is a civil revision petition which has been filed against the order made by the learned Subordinate Judge of Tellicherry in O. P. No. 55 of 1948.

2. The facts are: in regard to certain properties gifted away from the tavazhi a suit was sought to be laid in, the pauper form by the petitioner, who is a member of the tavazhi, in a representative capacity for recovery of those gifted properties. This petitioner did not file the suit in the first instance. On the other hand, one Govindan Nair filed O. S. No. 16 of 1947 for partition. But subsequently when that Govindan Nair found that he had to pay court-fee he did not press that suit. Then this petitioner filed the O. P. with an application under Order 1, Rule 8, Civil P. C. to permit him to file the suit in a representative capacity.

The petitioner wanted to have the luxury of agitating this suit as a pauper and the question arose in the lower court whether this petitioner, though he is not possessed of means to pay court-fee, could be allowed to get along with the suit as a pauper when the tavazhi itself is found to be possessed of ample properties

in the shape of 67 items of Immovable properties valued at Rs. 8000 odd and movable properties valued at Rs. 7000 odd. The learned Subordinate Judge held following the decision of this court in -- "Vellingiri Naicken v. Shree Patteeswaraswami Devastanam", AIR 1949 Mad 714 (A) that the petitioner could not be allowed to sue as a pauper. Time was given to him for payment of the necessary court-fee. Hence this civil revision petition.

3. I am in entire agreement with the learned Subordinate Judge that when this petitioner has sought to bring a suit in a representative capacity and when as a matter of fact he has filed a petition in order to be granted permission to file and continue the proceedings in a representative capacity, the mere fact that he is a pauper would not entitle him to maintain the suit in the pauper form. On the other hand it is only when the tavazhi of the petitioner and the members of the tavazhi are paupers then the suit could be allowed to be filed as a pauper suit.

Under Explanation (iii) to rule 1 of Order 23, Civil P. C. where the plaintiff sues in a representative capacity the question of pauperism shall be determined with reference to the means possessed by him in such capacity. I have already mentioned that the tavazhi is possessed of ample properties. In fact when the petitioner was asked whether he consulted the other members of the tavazhi in regard to the financing of this litigation, he began to shilly-shally. The petitioner first stated that he did not consult Govindan Nair before filing the suit and immediately afterwards he said that he asked for financial help and he did not get it. We do not know whether the petitioner approached the other members of the tavazhi in regard to the financing of this suit and whether they declined to do so. The point, as I have pointed out, is concluded by authority, viz, the decision in -- "AIR 1949 Mad 714 (A)", which has been followed by Govinda Menon J. in -- S.N. Pachamuthu Nadar Vs. Naga Pillai and Others, . The learned Judge writes,

"I am in respectful agreement with the conclusion arrived at there. But the circumstances and the facts here are quite different."

In other words Govinda Menon J. on the peculiar facts and circumstances of the case before him came to the conclusion, notwithstanding his approval of general conclusions arrived at by Rajamannar J. (as he then was), that in the instant case before him the plaintiff could be allowed to sue in the pauper form.

4. Therefore the conclusion of the learned Subordinate Judge is irreproachable and merits no interference at my hands. This civil revision petition is dismissed with costs.