

(1934) 05 MAD CK 0022
In the Madras High Court

V.R. Ramaswami Naidu

APPELLANT

Vs

Vaiyapuri Nandan

RESPONDENT

Date of Decision : 10-05-1934

Acts Referred:

Citation : AIR 1934 Mad 653 : 152 Ind. Cas. 135 : (1934) 40 LW 783

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—This is an application to revise the order of the District Judge of Madura by which he refused permission to the

petitioner to prosecute the appeal tiled by him as a pauper. In the first Court the District Munsif gave the petitioner permission to sue as a pauper.

In that Court he obtained a decree for partition and separate possession of a half share of the suit properties subject to his liability for half the debts

under Exs. 4, 5 and 6. In appeal the petitioner contended that he was not liable for the debts.

2. The learned District Judge has rejected the petitioner's application without giving any reasons. The order states simply ""pauper application

rejected. To 28th for payment of court-fees."" This Court therefore is not in a position to understand exactly on what grounds the lower Court

passed its order. But it may be presumed, from the circumstances of the case that the learned Judge must have thought that having obtained a

decree in the first Court the petitioner must be in a position to pay the Court-fee as his right to a half-share of the suit properties was declared by

that decree. If this is the ground on which the learned Judge's order is based, it cannot be upheld for two reasons. In the first place the petitioner

does not become the owner of the properties decreed to him unless he pays a half, share of the liability. If he is a pauper he cannot find means to pay off that liability. It follows that the decree for possession of half of the suit properties cannot be of much use to him. Secondly, in the explanation to Order 33, Rule 1, Civil P.C., the definition of "pauper" is given from which it appears that in considering whether a person is a pauper the subject matter of the suit should be excluded. If so, the decree that he has now succeeded in obtaining should be excluded from consideration when the application for permission to prosecute the appeal as a pauper is considered. I am not able to assign any other reason for the rejection of the plaintiff's application by the learned Judge.

3. In these circumstances, I set aside the order of the learned Judge and give permission to the petitioner to prosecute the appeal as a pauper in the same way as he was allowed to conduct the suit in the original Court. I make no order as to costs.