

Ratheesh vs Insight Chits (P) Ltd

Ratheesh vs Insight Chits (P) Ltd

SooperKanoon Citation : sooperkanoon.com/1727563

Court : Kerala

Decided On : Jan-31-2020

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : FAO/5/2020

Appellant : Ratheesh

Respondent : Insight Chits (P) Ltd

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN FRIDAY, THE 31ST DAY OF JANUARY 2020 / 11TH MAGHA, 1941 FAO.No.5 OF 2020 AGAINST THE ORDER DATED 17-12-2019 IN POP 12/2017 IN UNNUMBERED AS OF 2017 ON THE FILES OF THE COURT OF ADDITIONAL SUB JUDGE, IRINJALAKUDA APPELLANTS/PETITIONERS:

1 RATHEESH, AGED 40 YEARS S/O.THOTTUPARAMBIL VELAYUDHAN, KALLUR DESOM AND VILLAGE MUKUNDAPURAM TALUK, KALLOOR.P.O(680317) NOW RESIDING AT MULANGU DESOM, THOTTIPPAL VILLAGE, THOTTIPPAL.P.O.,

MUNKUNDAPURAM TALUK, THRISSUR DISTRICT-680310 2
VELAYUDHAN, AGED 65 YEARS S/O.CHAKKAPPAN,
THOTTUPARAMBIL HOUSE, KALLUR DESOM AND VILLAGE,
KALLOOR.P.O., MUKUNDAPURAM TALUK, THRISSUR DISTRICT-
680317 3 SUJA RATHEESH, AGED 32 YEARS
W/O.THOTTUPARAMBIL RATHEESH, KALLUR DESOM AND VILLAGE
MUKUNDAPURAM TALUK, KALLOOR.P.O (680317), NOW RESIDING
AT MULANGU DESOM, THOTTIPPAL VILLAGE, THOTTIPPAL.P.O.,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT-680310 BY ADVS.
SMT.SREEDEVI KYLASANATH SRI.ACHUTH KYLAS SRI.R.MAHESH
MENON SRI.DEAGO JOHN K SHRI.AMAL DEV C.V.

RESPONDENTS/RESPONDENTS: 1 INSIGHT CHITS (P) LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, URAKAM VILLAGE
AND DESOM, URAKAM.P.O., THRISSUR DISTRICT-680562

2 SANTHOSH, AGED 48 YEARS S/O.BALAKRISHNAN, THRIKKOOR
MOOSARIVEETIL, KALLOOR VILLAGE AND DESOM,
KALLOOR.P.O., MUKUNDAPURAM TALUK, THRISSUR DISTRICT-
680317 3 SARITHA, W/O.LATE MOOSARIVEETIL SANTHOSH,
KALLOOR VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, KALLOOR680317 4 SANDEEP, S/O.LATE
MOOSARIVEETIL SANTHOSH, KALLOOR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, REPRESENTED BY GUARDIAN AND
MOTHER SARITHA, W/O.LATE MOOSRIVEETIL SANTHOSH,
KALLOOR VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN-680317 5 SANOOP, S/O.LATE
MOOSARIVEETIL SANTHOSH, KALLOOR VILLAGE AND DESOM,
MUKUNDAPURAM TALUK, REPRESENTED BY GUARDIAN AND
MOTHER SARITHA, W/O.LATE MOOSRIVEETIL SANTHOSH,
KALLOOR VILLAGE AND DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT, PIN-680317

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 31.01.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has been impelled by the appellants against the order of the Additional Sub Judge, Sub Court, Irinjalakuda, in P.O.P.No.12/2017.

2. The appellants say that the impugned

order was passed in their absence by the Court

below and that their petition seeking leave to sue as indigent persons has been dismissed on the basis of a report of the Tahsildar placed on record by the learned Government Pleader, wherein, it was shown that they are in possession and ownership of 9 cents of land with a residential house. They say that the Court below appears to have been swayed also by the fact that they are in possession of essential household articles like fridge and television and has thus concluded that they have means to pay the Court Fee on the suit. They say that these conclusions of the Court below are without basis particularly since their properties have been attached-as is also reported by the Tahsildar-and therefore, pray that this appeal be allowed and the P.O.P. be directed to be reconsidered after affording them necessary opportunity.

3. Even though notice from this Court has

been validly served on the respondents, they have chosen not to be present in person or to be represented through counsel, constraining me to dispose of this appeal without hearing their version.

4. I have examined the impugned order and

also the copy of the report filed before the Court below by the learned Government Pleader, a copy of which has been made available across the Bar by the learned counsel appearing for the appellants. There is no doubt that the said report mentions that the appellants are in possession of 9 cents of land with a residential house which contains all the essential household articles. However, it is also evident that there are attachments over the immovable properties; and obviously, therefore, the Court below could not have reckoned the same to be evidence of the ability of the appellants to pay the Court Fee. Further, the mere presence of household articles in their house could not have lead to an automatic inference that the appellants have means to pay the Court Fee and I further notice that when the P.O.P was disposed of, the appellants were absent, though PW1 had testified on a date before that.

5. I am, therefore, of the view that the

P.O.P requires to be reconsidered by the Court below, after affording an opportunity of being heard to the petitioners also, so that they can establish their claim before it in an effective manner. In the afore circumstances, this appeal is allowed and the impugned order is set aside; with a consequential direction to the Court below to reconsider P.O.P.No.12/2017, after affording necessary opportunity to both sides and to issue orders thereon as expeditiously as is possible, but not later than 31.03.2020. This appeal is thus ordered.

Sd/- DEVAN RAMACHANDRAN RR JUDGE

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com