

U.M. Usman Vs. Mayor Simon

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Court : Kerala

Decided On : Dec-15-1958

Reported in : AIR1959Ker218

Judge : G. Kumara Pillai, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 33, Rule 1

Appeal No. : Civil Revn. Petn. No. 746 of 1958

Appellant : U.M. Usman

Respondent : Mayor Simon

Advocate for Def. : N.D.P. Nambudiripad, Adv.

Advocate for Pet/Ap. : M. Madhavan Nair, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

G. Kumara Pillai, J.

1. This is a petition for revising an order of the District Munsiff of Parur allowing an application to file a suit in forma pauperis. The counter Petitioner before this court is the person who seeks to file the suit in forma pauperis. He is a member of the

congregation of a Jewish Synagogue at Parur, and the suit is for setting aside a sale deed executed by the trustee or administrator of the Synagogue in favour of the revision petitioner for one of the properties belonging to the Synagogue and recovery of possession of the said property for and on behalf of the Synagogue. According to the findings of the lower court, the counter petitioner is a pauper and is also not in possession of any assets belonging to the Synagogue which would enable him to pay the necessary court-fee,

2. The only ground on which the revision petitioner impugns the order of the lower court before me is that, as the Synagogue is in possession of properties worth two or three lakhs of rupees and has the means to pay the necessary court-fee, it is not competent for the counter petitioner to file a suit in forma pauperis on behalf of the Synagogue even though he himself is a pauper. Reliance was placed, in support of this contention on the decisions of the Madras High Court in *Vellingiri Naickan v. Sree Patteswaraswami Devasthanam*, AIR 1949 Mad 714 and *T. K. Nair v. N. G. Amma*, AIR 1954 Mad. 76. In the former case some of the residents of a village sought to file a suit in forma pauperis on behalf of all the villagers, and their application for leave was dismissed on the ground that their individual pauperism would not entitle them to the benefit of Order XXXIII, Code of Civil Procedure. In the second case, AIR 1954 Mad 76, a junior member of a marumakkathayam thavazhi sought leave to file a suit in forma pauperis to recover possession of the property for and on behalf of his thavazhi, and his application for leave was dismissed on the ground that as the thavazhi on whose behalf he sought to file the suit was possessed of sufficient means to pay the necessary court-fee he was not entitled to sue in forma pauperis for and on behalf of it. Both these decisions were expressly based on Explanation 3 added by the Madras High Court to Order XXXIII, Rule 1, C. P.C. No explanation corresponding to Madras explanation 3 has been added by the Travancore-Cochin High Court to the explanation to Order XXXIII, Rule, 1, C.P.C., and in all the other jurisdictions where there are no explanations corresponding to the Madras explanation the decisions have been uniform that, when, in a representative suit, the representative who filed the suit is not possessed of sufficient means belonging to the real plaintiff or plaintiffs on whose behalf he filed the suit, he is entitled to file the suit in forma pauperis,

3. In *Nanda LAL Chattarjee v. Dwarka Nath Das*, 11 Ind Cas 892, a case in which one of four Shebait brought a suit against his three co-shebait and an alienee of theirs for recovery of possession of endowed property for and on behalf of the trust the Calcutta High Court has said:

'The plaintiff is neither in his personal capacity nor as shebait in possession of sufficient means to enable him to pay the fee prescribed by law for the plaint. Therefore, he is a pauper within the meaning of Order XXXIII of the Civil Procedure Code. Being a pauper, he is entitled to sue as such and is not disentitled by the mere fact that the shebait whom he is compelled to sue may be possessed of sufficient means for payment of the prescribed fee'.

The same High Court has held in *Mabia Khatun v. Sheikh Satkari*, AIR 1927 Cal 309:

'When a plaintiff sues in a representative character, such as a mutawalli, trustee or shebait unless it is shown that the plaintiff has in his possession property belonging to the wakf estate or trust or the idol for whom he sues sufficient to enable him to pay the requisite court-fee prescribed by law he may be allowed to sue as a pauper even if it is shown that he has sufficient personal property of his own. The capacity of a person suing in a representative character must be kept distinct from his personal capacity'.

Following this decision, a Full Bench of the Oudh Chief Court has held in *Sundar Bharthi v. Trust Mandir Nageshar Nath*, AIR 1940 Oudh 148 (FB) :

'When a plaintiff sues in a representative character such as a mutwalli trustee or a shebait, unless it is shown that the plaintiff is in possession of property belonging to the wakf estate or trust or the idol for whom he sues, sufficient to enable him to pay the requisite court-fee prescribed by law, he may be allowed to sue as a pauper even if it is shown that he has sufficient personal property of his own. The capacity of a person suing in a representative character must be Kept distinct from his personal capacity.'

The Mysore High Court also followed the Calcutta decision and held in *Chikkananjundappa v. Pillanmi*, AIR 1955 Mys 128:

'..... even though the trustees are possessed of sufficient means of their own to enable them to pay the court-fee, they can be permitted to sue in forma pauperis if they are not in possession of any of the properties belonging to the trust.'

4. The respondent's learned counsel contends, that even under the Madras Explanation 3 the position accepted in the above decisions must hold good. Explanation 3 reads as follows:

'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'.

What the explanation says is that 'the question of pauperism shall be determined with reference to the means possessed by him in such capacity', that is to say, what is material for the determination of the question whether the plaintiff is entitled to file the suit in forma pauperis is whether he is in possession of sufficient means belonging to the institution or persons on whose behalf he files the suit to pay the necessary court-fee. The institution or the group of persons on whose behalf the suit is brought may be rich. But the representative who files the suit may not be in possession of any means belonging to the institution or the group of persons on whose behalf he files the suit. There is nothing in Explanation 3 which deprives the representative of the right to file the suit in forma pauperis in such cases. On the other hand, it appears to me that Explanation 3 requires that, in such cases, the representative should be allowed to file the suit in forma pauperis. Conversely, the institution or the group of persons on whose behalf the suit is brought may have no property or means to pay the court-fee but the representative who files the suit may be rich in his individual capacity and able to pay the necessary court-fee. But, as Madras Explanation 3 says that the question of pauperism shall be determined with reference to the means possessed by him in such 'capacity (representative capacity)', the right to file the suit in forma pauperis has to be decided not with reference to the question whether the representative in his individual capacity has the means to pay the court-fee but

whether he is in possession of sufficient means belonging to the institution or group of persons on whose behalf the suit is filed, for paying the necessary court fee. In all these cases what appears to be material under the Madras explanation 3 is whether a representative who files the suit is in possession of sufficient means belonging to the real plaintiff, i.e., the institution or the group of persons on whose behalf the suit has been filed, to pay the necessary court-fee.

5. It is not clear from the report in AIR 1949 Mad 714, whether the plaintiff who brought the suit in that case was possessed of means belonging to the villagers for paying the necessary court fee or not. No doubt, the learned Chief Justice has said in that case:

'I entirely agree with the learned Subordinate Judge that if the suit is on behalf of the residents of Parur, it cannot be said that they are not possessed of sufficient means to enable the court fee to be paid'.

The judgment is very short, and what is said after the above statement is;

Under Explanation (iii) when a plaintiff sues in a representative capacity, the question of pauperism shall be determined with reference to the means possessed by him in such capacity. For instance, the particular plaintiff suing in a representative capacity may be himself a pauper, but if he is suing on behalf of other persons who cannot be described to be paupers, he is certainly not entitled to the benefit of Order 33 by reason of his individual pauperism.

The civil revision petition is therefore dismissed with costs.'

The case in AIR 1954 Mad 76 is clear. There the representative was not in possession of any means belonging to the real plaintiffs to enable him to pay court fee. Still the learned Judge held that Explanation 3 would apply and confirmed the decision of the lower court dismissing the application for leave to file the suit in forma pauperis. To my mind, it is doubtful whether Madras Explanation 3 would support this decision; but as the Travancore-Cochin High Court has not added to the Code of Civil Procedure any explanation similar to the Madras explanation 3, it is not necessary to pursue that question in this case. Both the Cochin High Court

and the Travancore High Court have recognised the rights of junior members of marumakkathayam tarwads to file suits in forma pauperis on behalf of their tarwad when they are not possessed of sufficient means belonging to the tarwad to pay necessary court fee even though the tarwads themselves are rich (see Padmanabha Menon v. Krishna Menon, 25 Cochin L. R. 766, and Parameswaran Pillai v. Krishna Pillai, 14 Trav LJ 209).

6. Following the decisions in 11 Ind Cas 892, AIR 1927 Cal 309; AIR 1940 Oudh 148 (FB), AIR 1955 Mys 128 : 25 Cochin LR 766, and 14 Trav LJ 299, I would hold that, when a plaintiff sues in a representative capacity he is entitled to sue in forma pauperis if he is not in possession of properties or funds belonging to the real plaintiff, i.e., the institution or group of persons on whose behalf he files the suit, sufficient to enable him to pay the necessary court fee and that, in such cases, the question of the means of the real plaintiff is immaterial. In the present case the real plaintiff is the Synagogue. It has undoubtedly properties worth about two or three lakhs of rupees, and according to the plaintiff, the trustee is mismanaging the Synagogue's property and has made alienations liable to be set aside. To negative the counter-petitioner's right to file the suit in forma pauperis on the ground that the Synagogue has sufficient properties, to pay court fee, which are in the possession of the very trustee, who might be mismanaging the affairs of the Synagogue and might be interested in preventing the suit from being filed, would be to effectively prevent the rights of the Synagogue from being vindicated.

7. In the result, the order of the lower Court is confirmed and this revision petition is dismissed. No costs.