

**Johnson Vs. Ouseph**

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**SooperKanoon Citation :** [sooperkanoon.com/731009](http://sooperkanoon.com/731009)

**Court :** Kerala

**Decided On :** Nov-09-2006

**Reported in :** AIR2007Ker175

**Judge :** M. Ramachandran and; K.T. Sankaran, JJ.

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

**Appeal No. :** F.A.O. No. 262 of 2006

**Appellant :** Johnson

**Respondent :** Ouseph

**Advocate for Pet/Ap. :** Babu Joseph Kuruvathazha, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**K.T. Sankaran, J.**

1. This appeal is filed against the order dated 25-8-2006 refusing leave to file the suit as an indigent person. The appellant/plaintiff instituted the suit against his father for realisation of money. The court-fee payable in the suit is Rs. 29,750/-. The contention of the appellant is that he has no property or income except the properties shown in the schedule to the application for leave to file the suit as an

indigent person. Item No. 1 in the C schedule is his residential property and item No. 2 of C schedule is the property assigned to the appellant by his father. The B schedule properties are the movables belonging to the appellant. He contended that except those mentioned in B and C schedule, he has no other properties, assets or income.

2. The respondent contended that the appellant is a person having sufficient means to pay the court-fee. A commission was taken out to disprove the contentions raised by the appellant. The Commissioner filed Ext. C1 report. The report of the Commissioner shows that the house of the appellant is having an area of 1200 sq. feet. There is a cattle shed, in which 7 cattle could be accommodated. The Commissioner had seen 4 cows in the cattle shed. The Commissioner has also reported that in the house belonging to the appellant he saw a Television set, Tape recorder, Sewing Machine, V.C.D, Fridge, Heater, Fan etc. There is a motor shed in the properties belonging to the appellant and there is electric connection as well.

3. The Court below disbelieved the evidence of the appellant as P.W. 1, and held that no attempt was made by the appellant to assail the Commissioner's report and to set aside the same. A contention was raised that the Commissioner had inspected some other property and not the property belonging to the appellant. This belated contention was negated by the Court below. The house was shown to the Commissioner by the father of the appellant. The Court below has noticed that if the property inspected by the Commissioner is not owned by the appellant, an application could be filed by the appellant directing the Commissioner to visit the correct place, but that was not done by the appellant. The appellant admitted in evidence that the movables found by the Commissioner are kept in his own house. The Court below concluded that the evidence of P.W. 1, when considered along with Ext. C1 report, would prove that the appellant has sufficient means to pay the court-fee.

4. The learned Counsel for the appellant had also raised a contention that the properties mentioned in the schedule to the application filed for permission to file the present suit as an indigent person is the subject-matter of O.S. No. 2138 of

2004 on the file of the Munsiffs Court, Irinjalakuda, filed against the appellant by his father. The contention is that under Order XXXIII, Rule 1 of the Code of Civil Procedure, for the purpose of assessing the means of the plaintiff to pay the court-fee, the subject-matter of O.S. No. 2138 of 2004 is to be excluded. Counsel relies on Explanation 1 to Rule 1 of Order XXXIII, which provides that a person is an indigent person, if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit. Laying emphasis on the words 'the subject-matter of the suit' the counsel contends that even if the property is the subject-matter of another suit, the value of that property cannot be taken into account for assessing the means of the plaintiff. The words employed in Explanation 1 to Rule 1 of Order XXXIII are 'the subject-matter of the suit' and not subject-matter of 'a suit' or 'any suit'. The only irresistible conclusion that could be arrived at is that the value of a property could be excluded from the purview of assessment of the means of the plaintiff only if the property is the subject-matter of that suit itself. Even if the property is the subject-matter of another suit, that is not a ground to exclude it from the purview of Rule 1 of Order XXXIII or to exclude it from valuation so as to assess the indigency or otherwise of the plaintiff. Only when the property in question is the subject-matter of the same suit filed by the indigent person, such property could be excluded as provided in Explanation 1 to Rule 1 of Order XXXIII of the Code of Civil Procedure.

5. The contentions raised by the appellant are devoid of merit. The appeal is accordingly dismissed.

6. Learned Counsel for the appellant prays for a reasonable time to enable the appellant to pay the court-fee. It is only just and reasonable to grant one month's time to the appellant to pay the court-fee.