

**IN THE COURT OF THE MUNSIFF, PERUMBAVOOR**

Present:- Sri. K.P. Joy, B.Sc., LL.B., Munsiff.

Wednesday, the 20<sup>th</sup> day of September, 2017/29<sup>th</sup> Bhadra, 1939

**I.A. No.456/2015**  
**in**  
**O.S. No.398/2014**

**Petitioners/Defendants:-**

1. K.N.Radhakrishnan, aged 59 years, S/o. Narayana Pilla, Kavissery House, Imurikara, Imuri P.O., Perumbavoor.
2. Suseela, W/o. Radhakrishnan, Kavissery House, Imurikara, Imuri P.O., Perumbavoor.

**By Adv. V.Ajithkumar.**

**Respondent/Plaintiff:-**

K.A.Anwar, aged about 44 years, S/o. Abdul Rahman, CC.11/1970, Fort Kochi P.O., Konchery, Near C.P.Thodu, Fort Kochi Village, Kochi - 682 001.

**By Adv. K.M.Shamsudheen.**

This petition having been finally heard before me on 20.9.2017 and the Court on the same day passed the following:-

## **O R D E R**

This application is filed under Order 33 Rule 1 CPC by the counter claimants/defendants.

2. The suit is for permanent prohibitory injunction with respect to plaint schedule property. It is having an extent of 20.24 ares and is comprised in Re-Sy.75/2/2 in Block 24 of Marambilly Village. It is stated in the plaint that plaint schedule property previously belonged to defendants, they sold it to one Subik Ahammed, he sold it to one Haneefa and the plaintiff purchased it from Haneefa. According to the defendants, D2 is the actual owner of the property and she is in possession and enjoyment of the property. The document executed in favour of Subik Ahammed was for the purpose of security for loan amount. The plaintiff is a pendente lite purchaser of the property without consideration and good faith. The defendants allege that plaintiff cut and removed trees worth ₹. 3,00,000/-. Standing in the property. Hence they filed a counter claim for compensation of ₹. 3,00,000/- from plaintiff. The total court fee for counter claim is ₹. 28,400/-. The counter claimants paid ₹. 2,840/- as court fee. They now seek possession of the court to prosecute the case as indigents.

3. The averment in this application is that the petitioners/counter claimants are senior citizens and they have no earnings or assets other than subject matter. They did not dispose of any movable or immovable property immediately before filing of this application. They pray for granting permission to them to

prosecute the counter claim as indigents.

4. As directed by the court, the Village Officer, Koovappady conducted an enquiry and filed a report regarding the financial position of the petitioners. It is stated in the report that 1<sup>st</sup> petitioner has 29.26 ares of property in Sy.No.360/6-2 and Sy.No.366/3-1 of Koovappady village and a two storeyed residential house was constructed therein. There is rubber cultivation in the property. The petitioners have an annual income of ₹. 32,000/- from agriculture. The petitioner have 2 children and they are well qualified. According to Village Officer, the sons of the petitioners are undergoing apprenticeship in Cochin Refineries Ltd and have annual income of ₹. 36,000/- each. The Village Officer has also reported that the family has an annual income of ₹. 1,04,000/-. First petitioner was formerly engaged in contract work.

5. This court found no reasons to reject the application under Order 33 Rule 5 CPC. Hence notice was given to the respondent and Government Pleader and enquiry was conducted under Order 33 Rule 7 CPC.

6. The evidence of petitioners consists of testimony of PW1 and Ext.A1. 1<sup>st</sup> petitioner was examined as PW1. The evidence of the Government consists of report of Village Officer.

7. Heard both sides and Addl. Govt. Pleader.

8. Admittedly, the dispute in with respect to ownership of

20.24 ares of property comprised in Re-Sy.No.75/2/2 in Block 24 of Marambilly village. It is consider from the report of Village Officer that the 1<sup>st</sup> petitioner is having another residential property in Koovappady village. It has an extent of 29.26 ares. A two storied residential house is also situated therein. The contention of the petitioner is that the residential property was offered as security in Corporation Bank, Vyttila and Debt Recovery Tribunal has already initiated action. The documents related to the loan transaction is marked Ext.A1. 1<sup>st</sup> petitioner in only a guarantor. The Principal debtor of the Bank is one M. Mohanan. Ext.A1 is related to the steps taken by Corporation Bank in the year 2013 and 2014. The petitioners have no case that the property is not now in their possession. PW1 has stated that he has not so far appeared before Debt Recovery Tribunal.

9. PW1 has also admitted in cross examined that his both sons are Engineering graduates and they studied self financing engineering colleges in Karnataka. PW1 has also stated that both of them underwent training in Cochin Refineries Ltd. However he has added that both of them are unemployed. PW1 has conceded that he is having a ration card issued to the persons above poverty line. The monthly income shown in the ration card is ₹. 3000/-.

10. PW1 could not state anything regarding the proceedings of Debt Recovery Tribunal. He could not even state whether the proceedings are pending or not. He has not appeared before the debt Recovery Tribunal. According to him, the property of Principal debtor M.Mohanan was also offered as security. From Ext.A1, it is seen that Corporation Bank initiated action against the secured

assets. It is not sure whether the proceedings are now pending or not.

11. It is clearly stated in the report of Village Officer that the petitioners and their family are leading decent life. They have property and income. It can not be believed the version of PW1 that both of his children are unemployed. They are Engineering graduates and they had training from Cochin Refineries Ltd. The report of the Village Officer is believable. The petitioners have an annual income of ₹. 1,04,000/-.

12. The petitioners have sufficient means to pay the court fee. They are not indigents. There is no merit in this application. This court refuses to allow the applicants to sue as indigent persons. Application is dismissed. No costs.

Pronounced by me in the open court on this the 20<sup>th</sup> day of September, 2017.

Sd/-  
K.P.JOY,  
MUNSIFF.

### **APPENDIX**

#### **Petitioner Exhibit:-**

A1. 3.6.2014 Moovable secured assets of Corporation Bank

**Respondent Exhibit** : **NIL**

**Court Exhibit:-** : **NIL**

**Petitioner Witnesses:-**

PW1. 31.10.2016 Radhakrishnan.

**Respondent Witness** : **NIL**

Id/-  
MUNSIFF.

// True Copy //

(By Order)

Junior Superintendent.

PPJ.  
Comp.by:

|                                                           |           |
|-----------------------------------------------------------|-----------|
| Copy of Order in<br>I.A.No.456/2015 in<br>O.S.No.398/2014 |           |
| Dated:                                                    | 20.9.2017 |