

IN THE COURT OF THE SUB JUDGE, MUVATTUPUZHA

Present:- Sri. Aravind B. Edayodi, Sub Judge

Saturday, the 19th day of August 2023/ 28th Sravana 1945**I.A. 03/2021 in O.S. 10/2018****Petitioner/Plaintiff:-**

Jaison M.A., Aged 42, S/o. Antony, Moothedan House, Meloor
P.O, Chalakudy Taluk, Meloor Village.

By Advs. K C Eldho, Jijo Thomas, Aneesh James,
Malleenathan M & Jayasankar G

**Respondents/Defendants 1 and 2 and the Additional 3rd Respondent/
Defendant:-**

1. Leelamma John, W/o. John, Kurumbalakkattu House, Manned, Muvattupuzha
2. Dileep John, S/o. Leelamma John, Kurumbalakkattu House, Manned, Muvattupuzha.
3. The District Collector, Trissur District

R1 & R2 By Advs. Biju Abraham & Thajuddeen E B
R3 AGP

This petition is filed under Order 33 Rule 1 and Section 151 of the CPC to permit the petitioner to proceed with the prosecution of the suit as an indigent person.

This petition coming on for final hearing on 10.08.2023 and the court on this day passed the following order:-

ORDER

This petition is filed by the plaintiff to permit him to proceed the suit, as an indigent person, against the defendants, stating he has no financial capacity to pay ₹2,32,560/- towards balance court fee and ₹27,000/- towards balance legal benefit fund.

2. According to the petitioner, in August 2018 his furniture godown was ruined in flood and he could not restart his business.

Presently petitioner is working in a jewellery shop, for a meager salary of ₹5700/- per month and his family of six members also under his care. According to the petitioner, though he has four items of properties, they are without any income and they are with liabilities and not in a position to dispose. Hence petitioner is not in a position to pay the balance court fee of ₹2,59,560/-.

3. In the above circumstances, the petitioner sought for an order permitting him to proceed the suit as an indigent person.

4. Respondents filed objection stating that the petition filed without disclosing the material facts regarding income of petitioner, details of his bank account and income tax returns and financial dealings. Hence the petition is liable to be dismissed.

5. Though Government pleader was served with notice no objection raised in respect of the relief sought by the plaintiff. Report from Village Officer regarding assets of plaintiff also received.

6. At the time of evidence, petitioner was examined as PW1. Ext.A1 to A9 documents were marked. PW2 also examined and Ext.A9 document is proved. Report received from the Village Officer is marked as Ext.X1. No evidence adduced from the side of the respondents.

7. Heard both sides.

8. Now the points that arose for consideration are:

1. Is the petitioner entitled to an order permitting him to sue as an indigent person?

2. What is the order as to costs?

9. Point No. 1:- The petitioner stated about his assets in the petition and adduced evidence as PW1. Petitioner could withstand the cross-examination regarding his inability to pay balance court fee due to loss of business on account of flood and due to liability over the properties entitled to him. For deciding the point - Whether petitioner is entitled to proceed the suit as an indigent person?, the financial capacity of the petitioner on the date of petition on 4.2.2021 is relevant and not the previous financial capacity of the petitioner. The repayment of loan amount after the filing of the petition itself does not show that petitioner has financial capacity to pay the balance court fee.

10. One of the contentions raised by the respondents/defendants is that petitioner did not reveal his right over the properties inherited from his father though the above items of property were described in the petition through amendment. There are two items of properties subsequently added in the petition, as the properties inherited by the petitioner, through amendment. One of the properties is mortgaged with bank and the right of petitioner over the remaining item of property is that of a co-owner. Hence the version of the petitioner that he could not dispose the above items of properties due to liabilities and co-ownership is acceptable and it could not be said that petitioner did not disclose the above item of property with malafide intention.

11. In Ext.X1 report the Village officer reported that petitioner/plaintiff is a person with annual family income of ₹2,40,000/-. The above report says the wife of the petitioner is a home maker and the children of the petitioner are students. The above facts also supports the version of petitioner that he has no sufficient income for paying balance court fee of ₹2,59,560/- (Rupees two lakh fifty nine thousand five

hundred and sixty). The learned counsel for the plaintiff relied dictum laid down by Hon'ble High Court of Kerala in Basil Thomas Vs. Joseph reported in 2013(2) KLJ 664 and submitted that just because that the plaintiff possesses a car, television and certain other equipments for a decent living in his household, which he has disclosed in his petition is not a ground to reject the relief to sue as an indigent person. The above dictum applicable to the facts and circumstance of this case also. From the evidence adduced by the petitioner as PW1, he could prove that he has no sufficient means to pay ₹2,59,560/- (Rupees two lakh fifty nine thousand five hundred and sixty) towards balance court fee as petitioner is presently a person with annual family income of ₹2,40,000/- with pressing needs to take care of a big family. Hence I find the point in favour of the petitioner.

12. Point No.2:- Considering the facts and circumstance of the case, each party shall bear their respective costs.

In the result, the petition is allowed. The petitioner/ plaintiff is entitled to proceed the suit, as an indigent person, deferring payment of court fee, according to law.

Dictated to the Confdl. Asst., typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 19th day of August 2023.

Sd/-
Aravind B. Edayodi
Sub Judge

APPENDIX

Petitioner's Exhibits:

A1	-	Passbook issued from Millennium Kuries Pvt. Ltd.
A2	-	Passbook issued from Millennium Kuries Pvt. Ltd.
A3	-	Passbook for Loan A/c. No.80009345247 issued from District Co-operative Bank, Thrissur

A4	-	Passbook on A/c No. 80003274723 issued from District Co-operative Bank, Trissur
A5, A6 & A7	-	Passbook bearing A/c No. 67015357469 of SBI Branch, Chalakudy (3 Nos.)
A8	-	I T Return for the year 2019-2020.
A9	20.08.2021	Residential certificate No.37 issued from Meloor Grama Panchayath

Respondent's Exhibits : Nil

Third Party Exhibits :

X1	24.07.2023	Report of Village Officer, Meloor, Muringoor, Vadakkemuri Group Village
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Petitioner's Witness

PW1	25.09.2021	Jaison M A
PW2	03.11.2021	Pauli P O

Respondents' Witness : Nil

//True Copy//

Id/-
Sub Judge
(By Order)

Sheristadar

Copied by : stn/-
Compd by : svb/-

Copy of Order in

I.A. 03/2021 in

O.S. 10/2018

Dated:- 19.08.2023