

IN THE COURT OF THE SUB JUDGE, NEDUMANGAD**Present : Smt. Rajasree. C.R, Civil Judge (Senior Division)****On Wednesday 18th February 2026/ 29th Magham 1947****I.A 9/2025 in OS 19/2019****Petitioner**

1. Selvestor, aged 58 years, S/o. Antony, Kottavila Thadathil Veedu, Mundela P.O., Vellanadu Village, Nedumangad Taluk.
2. Vijayakumari, aged 48 years, W/o.

Selvestor, Kottavila Thadathil Veedu, Mundela P.O., Vellanadu Village, Nedumangad Taluk.

(By Adv. Sri.S.Y. Mohankumar Kiran and Adv. B.V. Anilkumar)**Respondents**

1. Justin Das @ Shibu, S/o. Devadasan, aged 42 years, Anagha Bhavan, Puthenvila, Kottavila, Puthukulangara. P.O, Vellanad Village, Nedumangad Taluk.
2. Al Arif, S/o. Abdul Rashid, aged 31 years, Alif House, Kuzhivilakam, Mundela P.O., Aruvikkara Village, Nedumangad Taluk.
3. Shameer @ Shabeer, aged 36 years, S/o. Shahul Hameed, Thadatharikathu Puthen Veedu, Near

Kanikkapetti Junction., Mundela P.O., Aruvikkara Village, Nedumangad Taluk.

- 4 Binu, S/o. Manikantan Nair, Sivaganga, Ealamplamoodu, Thevancode, Panniyode, Veeranakavu Village, Kattakada Taluk.
- 5 Vishnu, S/o. Ganesan, aged 35 years, Vishnu Bhavan, Near Old market, Kallikkadu, Veeranakavu Village.
6. Navas, aged 44 years, S/o. Muhammed Haneefa, Noufiya Manzil, Parakkara Kuzhikonam, Vellanadu Village, Nedumangad Taluk.

((By Adv. Sri. V.A. Baburaj for R1 and R4 , Adv. Satheesh Babu for R5 and R6)

This petition having been finally heard on 29/01/2026 and the court on 18/02/2026 passed the following:-

ORDER

This application is filed under Order XXXIII Rule 1 of the Code of Civil Procedure, 1908.

2. Petition averments, in brief, are stated as follows :- The petitioners is the plaintiffs in the suit. The deponent is the second plaintiff in the suit. She has

filed the affidavit for an on behalf of the plaintiff, her husband. The suit has been filed for realisation of money. The defendants 1 to 6 have physically harassed the first plaintiff and she is suffering from headache, bodyache, cough, back pain, shoulder pain and is unable to go for any work. The second plaintiff is also having physical ailments and he is also unable to go for any work. The mother of the first plaintiff is bedridden and is residing along with the petitioners. Due to financial constraints, the petitioners are seeking the assistance from others. The petitioners have no income and have financial capability to remit the balance court fee. The property measuring 4.35 ares comprised in re-survey no.102/5, the property measuring 2.15 ares comprised in re-survey no.128/6, the property having an extent of 2.84 ares comprised in re-survey no.128/5-1 and the property measuring 2.5 ares of land comprised in re-survey no.128/4 of Vellanad village, Nedumangad Taluk lie as a single compact plot. This property belongs to the first plaintiff that was obtained from her father. On 22.03.1994, the first plaintiff has purchased some of the property. The second plaintiff is not having any avocation and is not having any income or salary. As per the plaint, the petitioners are liable to pay an amount of Rs.1,78,776/- as balance court fee. The petitioners are not able to remit the balance court fee. Thus, this application is filed to declare them as indigent person.

3. Along with this application, the petitioners have scheduled the movable and immovable properties possessed by them. Report has also been called for from the District Collector . From the report filed by the Deputy Collector it is revealed that the second petitioner is a painter by profession and is having yearly income of Rs.1,35,000/-. It is also mentioned that the first petitioner is also going for job. The property that is possessed by the petitioners are specifically mentioned in the report.

4. On the side of the petitioners, the first petitioner was examined as PW1.

5. Heard both sides.

6. Points that arose for consideration are

1. Is this petition allowable?

2. What is the order as to costs?

7. **Point no.1:** PW1, the first petitioner, filed affidavit in lieu of her examination in chief reiterating the petition averments. She deposed in tune with the averments in the petition disclosing that she is not able to go for any job. It is also stated that she has got various physical ailments and her husband, the second plaintiff, is also having the physical ailments. According to her, her aged mother, who is bedridden, is also residing with them and due to these reasons she is unable to go for any job. She had disclosed about the details of

the properties possessed by her. It has come in evidence that as the petitioners are not having any avocation they are not able to pay the balance court fee in this case. At the time of cross examination, it has come in evidence that presently PW1 is not having any avocation. Earlier she was doing catering job and now she is jobless. It has also come in evidence that there are no properties other than the properties mentioned in the affidavit.

8. Order XXXIII Rule 1 reads as follows: *Subject to the following provisions, any suit may be instituted by an indigent person.*

A person is an indigent person,--

(a) 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, or

(b) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.- *Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.*

Explanation III.- *Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.*

9. R.1 of O.33 of the Code of Civil Procedure, provides that subject to the provisions contained in O.33, any suit may be instituted by an indigent person. Explanation I to R.1 states that a person is an indigent person if he is not possessed of sufficient means to enable him to pay the court - fee. Explanation II states that any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person. R.5 provides for rejection of the application on various grounds. Clause (b) therein empowers the Court to reject the application where the applicant is not an indigent person, and clause (c) empowers the Court to reject the application where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as an indigent person.

10. In the case of **Jayaraj K.K and another v. J . Kalyani and another**, 2010(4) KHC 833 the Hon'ble High Court of Kerala has held that “ *In some cases, the plaintiff who was having sufficient resources may become a pauper subsequently. That does not preclude the plaintiff from filing an application for permission to sue as an indigent person at a later point of time, that is, at the time of payment of the balance court - fee. The question to be considered is whether the plaintiff has the means to pay the court - fee. It is also relevant to decide whether she has disposed of any of her properties within two months before the institution of the suit or whether there is any contumacious conduct*

on the part of the plaintiff disentitling her to the benefit of the provisions of O.33 of the Code of Civil Procedure. In the case of loss of assets, properties or resources after filing the suit under circumstances in which the plaintiff cannot be blamed at all or in cases where it cannot be said that there was any contumacious conduct on the part of the plaintiff, the Court would have jurisdiction to grant an application under O.33 R.1, even at the stage of payment of balance court - fee. The honest belief of the plaintiff that she would be able to pay court - fee at a later point of time, would not debar her from claiming the benefit of O.33 if subsequently it is found that she is unable to pay the balance court - fee. A set of circumstances leading to the inference that the plaintiff is not an indigent person cannot be presumed to exist as on the date of institution of the suit. The Court cannot, on the basis of such presumption, hold that the plaintiff continues to be a person who is not an indigent at the time when the balance court - fee is to be paid. The Court cannot presume such set of facts and insist on proof of change of circumstances. Even if a person is really indigent at the time of institution of the suit, he may honestly hope to get some funds by some means so as to pay the balance court - fee. The Court cannot presume that at the time of institution of the suit, the plaintiff was not an indigent person and proceed with the case on that presumption. The law does not provide for proof of any such change of circumstances by the plaintiff in all cases where exemption from paying balance court - fee is claimed. However, if it is proved that the plaintiff had sufficient means to pay the court - fee at the time of institution of the suit, the plaintiff has to prove change of circumstances and all other relevant facts so as to claim exemption from paying the balance court - fee at the stage when it becomes payable. Under the scheme of O.33, change of circumstance is relevant for the purpose of holding that the plaintiff has ceased to be indigent requiring the plaintiff to pay the court - fee at a later point of time and to dispauper her.”

11. In the case at hand, the plaintiffs have remitted 1/10th court fee. Now, they claim that they are not having sufficient means to pay the court fee. The evidence let in by PW1 would show that both the plaintiffs have no avocation and income. Though it has come in evidence that they are in possession of the properties shown in the schedule, there is no evidence on record to show that the petitioners are earning income from the said properties. Even during cross examination, the evidence of PW1 remains unchallenged. The report of the Deputy Collector would also show that the petitioners/plaintiffs are not having sufficient funds to pay the balance court fee.

12. This is a case where PW1 categorically deposed that PW1 and her husband are not having any avocation and they are not in a position to remit balance court fee. It is pertinent to note that at the time of institution of the suit, the petitioners have remitted 1/10th of the court fee. At the time of cross examination, PW1 herself has deposed that she was having catering job earlier and presently she is not having any avocation. It is true that a party who has instituted the suit by paying 1/10th court fee can also file an application under Order XXXIII Rule 1 of the Code of Civil Procedure, if the party is unable to remit balance court fee due to their financial condition. Considering the report filed by the Deputy Collector and the evidence of PW1 it is clear that the petitioners have not suppressed any facts regarding the properties they are possessing. There is nothing that would disclose that the petitioners are stating

falsehood and they have sufficient means to pay the balance court fee. Though PW1 was cross examined at length nothing has been brought out to discredit her veracity regarding the inability of the petitioners to pay the court fee. The term sufficient means is interpreted in a catena of decisions as the ability or capacity of a person in the ordinary course to raise money by available lawful means to pay court fee. There are no materials on record to show that the petitioners have sources of income sufficient to pay court fee. The petitioners have made true disclosure of their entire assets both movable as well as immovable. The possession of immovable property does not by itself indicate that the petitioners have means to pay the court fee. Nothing has been brought out during cross examination to show that the petitioners are getting income from immovable properties that enable them to pay the balance court fee. Having considered the evidence on record, I am of the considered view that the petitioners have no sufficient means to pay requisite balance court fee and the application filed by them under Order XXXIII Rule 1 can be allowed. Thus, this point is found in favour of the petitioner.

13. Point no.2: There is no order as to costs.

In the result, this application is allowed. The petitioners/plaintiffs are exempted from remitting the balance court fee as they have no sufficient means to remit the same.

(Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court on this the 18th day of February, 2026).

RAJASREE.C.R

Civil Judge (Senior Division).

Appendix:

Exhibits marked on the side of Petitioner :- NIL

Exhibits marked on the side of Respondents :- NIL

Witness Examined on the side of Petitioner :

PW1 21/12/2025 Selvestor

Witness Examined on the side of Respondent : NIL

Civil Judge, Senior Division

Typed by :BR

Compd by :RPN