

A SOLOMON SELVARAJ & ORS.
v.
INDIRANI BHAGAWAN SINGH & ORS.
(Civil Appeal No. 8885 of 2022)

B DECEMBER 02, 2022

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Code of Civil Procedure, 1908: Or.33 – Suits for declaration of title and recovery of possession – Application u/Or.33 r.1 to sue as an indigent person – Trial court and High Court rejected the application on the ground that the suit is abuse of process of law and the court is barred by res judicata – On appeal, held: Application seeking permission to sue as an indigent person can be rejected on the grounds mentioned in Or.33 r.5 which includes the grounds where the allegations in the application do not show a cause of action and where the suit is barred by law (Or.33 rr.5(d) and (f) CPC) – However, the court may, while rejecting an application, u/Or.33 r.15A grant time to the applicant to pay the requisite court fee and then suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented – In the instant case, prima facie the suit was barred by res judicata and the plaint did not disclose any cause of action – Therefore, it cannot be said that the trial court committed any error in rejecting the application to sue as indigent person – Appellant agreed to pay the requisite court fees, four weeks’ time period is granted as envisaged in Or.33 r.15A – However, the observations made by courts below while rejecting the said application that the suit is barred by res judicata and no cause of action, shall be treated confine to deciding the application to sue as an indigent person only – It will be open to defendants to file an application to reject the plaint u/Or.7 r.11 or any other application and the same be considered in accordance with law without getting influenced by the observations.

Disposing of the appeal, the Court

HELD: 1.1The application under Order 33 Rule 1 CPC seeking permission to sue as indigent person can be rejected on the grounds mentioned in Order 33 Rule 5 CPC. It includes that

the allegations in the application would not show cause of action or that the allegations made by the applicant in the applications show that the suit would be barred by law for the time being in force (Order 33 Rule 5(d) & (f) CPC). Identical question was considered by this Court in the case of *Kamu Alias Kamala Ammal v. M. Manikandan and Anr.* While considering Order 33 Rule 5, CPC, it was observed that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint could not show any cause of action. Applying the law laid down by this Court in the said decision and when having prima facie found that the plaint does not disclose any cause of action and the suit is barred by res judicata, it cannot be said that the Trial Court committed any error in rejecting the application to sue as indigent persons. [Paras 6.4, 6.5][648-E-H]

Kamu Alias Kamala Ammal v. M. Manikandan and Anr.
(1998) 8 SCC 522 – relied on.

1.2 However, at the same time taking into consideration Order 33 Rule 15 and 15A CPC and when the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented, even considering Order 33 Rule 15 CPC on refusing to allow to sue as an indigent person which may be a bar to any subsequent application of the like nature in respect of the same right to sue, the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, therefore, taking into consideration Order 33 Rule 15A and Order 33 Rule 5 CPC, instead of remanding matter to the learned Trial Court to pass an appropriate order granting the appellants – original applicants time to pay the requisite court fee and now when the appellants have agreed to pay the requisite court fees, we grant further four weeks' time to the appellants – original applicants to pay the

H

Case Law Reference

D (1998) 8 SCC 522 **relied on** **Para 4.1**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8885 of 2022

From the Judgment and Order dated 28.01.2022 of the High Court of Judicature at Madras in CMA No. 38 of 2021.

E Mrs. V. Mohana, Sr. Adv., B. Ragunath, Mrs. N. C. Kavitha, Ms. Tanisha S., Ms. Sneha Botwe, K. Chandra Mohan, Sriram P., Advs. for the Appellants.

F V. Parthiban, N. Vijayaraghavan, P. B. Suresh, Vipin Nair, Karthik Jayshankar, Arindam Ghosh, Vinayak Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

G 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.01.2022 passed by the High Court of Judicature at Madras in CMA No.38 of 2021 by which the High Court has dismissed the said Miscellaneous Appeal and has confirmed the order passed by the learned Trial Court rejecting an application filed by the appellants herein seeking leave to file the suit as indigent persons, the original applicants – plaintiffs have preferred the present appeal.

H

2. That the appellants herein - original plaintiffs instituted the suit before the learned Trial Court for declaration of title and for recovery of possession. In the said suit the plaintiffs filed an application being I.O.P. No.1 of 2015 permitting them to file the suit as indigent persons. The said application was opposed by the defendants on the grounds *inter alia* that the suit is barred by res judicata; there is no cause of action for filing the suit. The claim of the plaintiffs that they are indigent persons was also contested. The learned Trial Court rejected the said application filed by the appellants seeking leave to file the suit as indigent persons. The order passed by the learned Trial Court rejecting the application to sue as indigent persons was the subject matter of miscellaneous appeal before the High Court.

2.1 By the impugned judgment and order the High Court has dismissed the said appeal by observing that the suit is barred by res judicata and that if the subsequent suit, if allowed would amount to an abuse of process of court. The impugned judgment and order passed by the High Court dismissing the appeal is the subject matter of present appeal.

3. Ms. V. Mohana, learned Senior Counsel appearing on behalf of the appellants has vehemently submitted that in an application permitting the plaintiffs to sue as indigent persons, it is not open for the learned Trial Court and/or the High Court to opine on merits of the suit and whether the plaintiff is likely to succeed and/or whether the suit is barred by res judicata or not. It is submitted that at the most the Court may dismiss the application permitting to sue as indigent persons and in that case the plaintiffs may pay the requisite court fees and thereafter the suit is to be proceeded further.

3.1 Ms. V. Mohana, learned Senior Counsel appearing on behalf of the appellants has stated at the Bar that the appellants are ready to pay the Court fees treating their application to sue as indigent persons dismissed.

4. Shri V. Parthiban, learned counsel has appeared on behalf of the respondents – original defendants. It is submitted that the present suit is nothing but an abuse of process of court and the court's process. That the suit is liable to be dismissed on the ground being barred by res judicata.

A 4.1 It is submitted that at the time of deciding the application to sue as indigent persons it is open for the Court to consider whether the suit is an abuse of process of law and/or Court or not. Reliance is placed in the case of **Kamu Alias Kamala Ammal vs. M. Manikandan and Anr.**, (1998) 8 SCC 522.

B 5. Heard learned counsel appearing for the respective parties at length.

C 6. At the outset, it is required to be noted that in the present case the appellants herein – the original plaintiffs while instituting the suit submitted an application to permit them to sue as indigent persons under Order 33 rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the ‘CPC’). The said application came to be dismissed by the learned Trial Court, confirmed by the High Court on the ground that the suit is vexatious, an abuse of process of law and the court and the suit is barred by res judicata. Therefore, the short question which is posed for consideration before this Court is whether on the aforesaid ground the application under Order 33 Rule 1 CPC namely to sue as indigent persons could have been rejected by the learned Trial Court? The question which is posed for consideration before this Court is even in a case where the application to sue as indigent persons is rejected what order can be passed and what will be the remedy available to the plaintiff/(s)?

E 6.1 While considering the aforesaid questions/issues relevant provisions of Order 33 CPC are required to be referred to:

F An application to sue as indigent persons would be under Order 33 Rule 1 CPC. Order 33 Rule 1A CPC provides for inquiry into the means of an indigent person. Order 33 Rule 2 CPC provides contents of application. Order 33 Rule 4 CPC provides for examination of the applicant in case the application is in proper form and duly presented. Order 33 Rule 5 CPC provides the circumstances under which the application for permission to sue as an indigent person can be rejected. Order 33 Rule 5 CPC reads as under:

G “**5. Rejection of application** - The Court shall reject an application for permission to sue as an indigent person-

(a) where it is not framed and presented in the manner prescribed by rule 2 and 3, or

H (b) where the applicant is not an indigent persons, or

(c) 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: A

Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person, or B

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter, or C

(f) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(g) where any other person has entered into an agreement with him to finance the litigation.” D

6.2 Order 33 Rule 7 CPC provides for procedure at hearing. Order 33 Rule 8 CPC provides for procedure if application is allowed. It appears that if the application is granted, it shall be numbered and registered, and it shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as the suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court fee or fees payable for service of process in respect of any petition, appointment of a pleader or other proceeding connected with the suit. Meaning thereby if the application is granted thereafter the suit shall be numbered and registered. Till then the plaint/suit shall be at pre-numbered and pre-registered stage. E F

6.3 Order 33 Rule 9 CPC provides for withdrawal of permission to sue as an indigent person on the application of the defendant, or of the Government pleader on the grounds stated in Order 33 Rule 9 CPC. When such an application is preferred under Order 33 Rule 9A CPC, it is the duty cast upon the Court to assign a pleader to a person who is permitted to sue as an indigent person, if not ready by a pleader. That thereafter most relevant provision is Order 33 Rule 15 and Order 33 Rule 15A CPC which read as under: G

H

A **“15. REFUSAL TO ALLOW APPLICANT TO SUE AS AN
INDIGENT PERSON TO BAR SUBSEQUENT
APPLICATION OF LIKE NATURE.**

B An order refusing to allow the applicant to sue as an indigent person shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right;

C **Provided** that the plaint shall be rejected if he does not pay, either at the time of the institution of the suit or within such time thereafter as the Court may allow, the costs (if any) incurred by the State Government and by the opposite party in opposing his application for leave to sue as an indigent person.”

D **“15A. GRANT OF TIME FOR PAYMENT OF COURT-FEE.**

E Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.”

F 6.4 Thus, from the scheme of Order 33 CPC, it emerges that the application under Order 33 Rule 1 CPC seeking permission to sue as indigent person can be rejected on the grounds mentioned in Order 33 Rule 5 CPC. It includes that the allegations in the application would not show cause of action or that the allegations made by the applicant in the applications show that the suit would be barred by law for the time being in force (Order 33 Rule 5(d) & (f) CPC). Identical question came to be considered by this Court in the case of **Kamu Alias Kamala Ammal** (supra). While considering Order 33 Rule 5, CPC, it is observed and held that the application for permission to sue as an indigent person has to be rejected and could not be allowed if the allegations in the plaint could not show any cause of action.

G 6.5 Applying the law laid down by this Court in the aforesaid decision and when having prima facie found that the plaint does not disclose any cause of action and the suit is barred by res judicata it cannot be said that the learned Trial Court committed any error in rejecting the application to sue as indigent persons.

H

6.6 However, at the same time taking into consideration Order 33 Rule 15 and 15A CPC and when the application to sue as indigent person is rejected and/or refused, the Court may, while rejecting an application, under Order 33 Rule 15A CPC grant time to the applicant to pay the requisite Court fee within such time as may be fixed by the Court or extended by it from time to time and upon such payment and on payment of cost referred to in Rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented, even considering Order 33 Rule 15 CPC on refusing to allow to sue as an indigent person which may be a bar to any subsequent application of the like nature in respect of the same right to sue, the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, therefore, taking into consideration Order 33 Rule 15A and Order 33 Rule 5 CPC, instead of remanding matter to the learned Trial Court to pass an appropriate order granting the appellants – original applicants time to pay the requisite court fee and now when the appellants have agreed to pay the requisite court fees, we grant further four weeks’ time to the appellants – original applicants to pay the requisite court fees and on payment of such court fees the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented. However, it is observed that any observations made by the learned Trial Court and the High Court that the suit is barred by res judicata and/or on no cause of action shall be treated confine to deciding the application to sue as indigent person only. However, at the same time it will be open for the defendants to file an appropriate application to reject the plaint under Order 7 Rule 11 CPC and/or any other application to reject the plaint and as and when such application is/are filed, the same be considered in accordance with law and on its own merits without in any way being influenced by any of the observations made by the High Court while rejecting the application to sue as indigent persons.

Present appeal stands disposed of in terms of the above. However, in the facts and circumstances of the case there shall be no order as to costs.