

RAJASTHAN HIGH COURT

Manjulata

Vs.

Sidhkaran

D.B. Civil Special Appeal No. 19 of 2004

(N.N. Mathur & K.K. Acharya, JJ.)

31.08.2004

JUDGMENT

N.N. Mathur, J.

1. The instant appeal is directed against the order of the learned Single Judge dated 30th January, 2004 dismissing the appellant's application under Order 33 of the Civil Procedure Code, 1908, seeking permission to file appeal as an indigent person.

2. The necessary facts giving rise to the instant appeal are that the appellant Smt. Manjulata married to Dr. Jagdish Jugtawat on 15.2.1982. Out of the wedlock, she gave birth to a male and a female child. Her husband Dr. Jugtawat contracted the second marriage on 28.6.1999 with one Suman and started living separately in a house at Chopasni Housing Board, Jodhpur. The appellant continued to reside with both her children viz; Deepak aged about 21 years of age & Rakhi aged about 19 years in the *House No. 62-A, Shastri Nagar, Jodhpur*. Admittedly, no divorce has taken place between the appellant and Dr. Jugtawat and, as such, the marriage still subsists. The respondent Sidhkaran, father of Dr. Jagdish Jugtawat, filed a suit for possession of the house in which the appellant is living. The suit has been decreed by the Court of learned Additional Sessions Judge No. 2, Jodhpur vide judgment & decree dated 29.4.2000. The appellant has preferred an appeal to this Court, which has been registered as S.B. Civil Regular First Appeal No. 121/2000. Alongwith the appeal, a pauper application being S.B. Civil Misc. Pauper Application No. 1/2000 was filed seeking permission to file the appeal as an indigent person, as she was not in a position to pay the court-fee of Rs. 50,140/-. An enquiry had been conducted by the Deputy Registrar (Judicial) as to the appellant's claim being indigent person. The Collector, Jodhpur submitted his report certifying that the appellant is an indigent person. However, the Enquiry Officer viz; Dy. Registrar (Judl.), as per report dated

16.12.2002, has recorded a finding against the appellant that she is not an indigent person. Learned Single Judge, relying on the report of Dy. Registrar (Judl.) has rejected the application filed by the appellant seeking permission to file an appeal as indigent person.

3. We have heard learned counsel for the parties and perused the impugned order dated 30.1.2004. According to the respondent, the appellant is not an indigent person or pauper, as she is holding sufficient funds, valuable ornaments and other movable and immovable properties. The respondent has given details with respect to the appellant's properties as follows:

- "i. Rs. 41,000/- in Bank A/c;
- ii. Two kilogram Silver Ornaments worth Rs. 14,000/-;
- iii. 35 Tolas of gold ornaments worth Rs. 2,39,000/-;
- iv. Movable house property worth Rs. 10,000/-;
- v. A plot measuring 40 x 60 ft. in KudiBhagtasni; &
- vi. Maintenance from Dr. Jugtawat at the rate of Rs. 1500/- p.m. with effect from 22.7.2000."

4. It is averred by the appellant that the plot & ornaments have been sold to meet the expenses required for maintaining herself and her son & daughter. It is further averred that she has no independent source of income except the amount of maintenance at the rate of Rs. 1500/- per month.

5. As per the enquiry report, the appellant was having 376.400 gms. Of gold ornaments worth Rs. 1,37,862/-. It was also found that there was no evidence to show that the ornaments and the plot have been sold. After appreciation of material on record, the learned Single Judge recorded a finding as follows :

"In the instant case, it has come on record that the applicant was having 35 tolas of gold and 2 kilograms of silver apart from cash in bank etc. and she could not lead sufficient, cogent and convincing evidence regarding selling out those ornaments. So much of ornaments are not ordinarily and daily worn by a lady. Thus, the case of the applicant does not fall within the purview of Section 60 of the Code and the applicant cannot be said to be an indigent or pauper person."

6. Having given our thoughtful consideration to the rival contentions raised by the

parties and having perused the record, we are of the view that the order of the learned Single Judge is inconsistent. The approach of the learned Single Judge is not in accordance with the procedure prescribed under Order 33 Rule 1 Civil Procedure Code. The expression "not possessed of sufficient means" mentioned in Explanation 1 to Rule 1 of Order 33 Civil Procedure Code while defining the word "pauper" refers to plaintiff's capacity to pay the court fee prescribed by law for the plaint in such a suit. What is contemplated is not possession of the property but sufficient means with capacity to raise money to pay the court-fee. Mere possession of ornaments or a plot is not sufficient. If the property in possession of the appellant is not sufficient enough to raise money to pay the requisite court fee, he or she should not be deemed to be possessing sufficient means to pay the court fee and, hence, the court can take her as "pauper" under this rule. On the other hand, if the appellant is in possession of the property sufficient enough to enable to raise cash for payment of the court-fee, he or she can be deemed to have sufficient means to pay the court fee and he or she would not be considered to be a "pauper".

7. In the instant case, the husband of the appellant without taking divorce from her, has contracted a second marriage and shifted to another house. The appellant is living in her matrimonial home with two children. The husband and his respondent-father without bothering to their own responsibility, has left the appellant to maintain herself and two children. It is her responsibility to educate and settle both the children in their life. Above all, the respondent wants to dispossess the appellant from the house. Be that as it may, it is a matter on merits of the appeal. The fact remains that no failure of justice is likely to be caused to the respondent, if the appellant is allowed to challenge the order of the Trial Court without payment of court- fee. It must be borne in mind that the court fee is a matter in between the appellant and the State and not the contesting party. The Collector, Jodhpur in his report has found the appellant indigent person. Thus, if the appellant is allowed to file an appeal as *forma pauperis*, we do not consider that any injustice would be caused to the respondent except that the appellant will be allowed to contest the legality & validity of the decree passed by the learned Trial Court against her.

8. Consequently, the appeal is allowed. The order of the learned Single Judge dated 30.1.2004 is quashed & set aside. The application filed by the appellant is allowed. She is allowed to file the appeal against the judgment & decree dated 29.4.2000 passed by the Additional Sessions Judge No. 2, Jodhpur as a "pauper". The appellant is entitled to the cost of the appeal against the respondent.

Appeal allowed.