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(27) For the view, we have taken above, we deem it unnecessary to go into the merits of the preliminary objections raised by the respondents in regard to the maintainability of the writ petition.

(28) In the final analysis, therefore, we do not find any merit in the writ petition and the same is dismissed accordingly. Rule is discharged.

(29) However, on the facts and circumstances of the case, there will be no order as to costs.

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**R.N.R.**

*Before M.M. Kumar, J.*

JAGGA SINGH,—Appellant

*versus*

JAGTAR SINGH AND OTHERS,—Respondents

*C.M. No. 4314-C of 2005 in*

*R.S.A. No. 1596 of 2005*

9th February, 2006

*Code of Civil Procedure, 1908—Orders XLIV and XXXIII—Appellant filing appeal personally in accordance with provisions of O.XXXIII—1st Appellate Court accepting the appeal as an indigent person—No improvement in financial position of appellant as he has neither acquired land or liquid cash—Possession of two kacha houses would not fall within the provisions of Ss. 60(ccc) and 33(1)(a) of C.P.C.—Appeal allowed permitting the appellant to file appeal as an indigent person.*

Held, that the appeal has been presented in accordance with the provisions of Order XXXIII of the Code personally by the applicant to the Registry of this Court. In the order dated 17th April, 2004, the learned lower appellate Court has accepted him as an indigent person and the fact that he had sold the land to Ravinder Pal Singh has also been considered. However, the same has not influenced the learned lower Appellate Court to record the finding in favour of the applicant-appellant because no consideration has passed hands to the applicant-appellant. Moreover, the Collector in his report dated 29th November,

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2002 to which reference has been made by the learned lower appellate Court categorically states that according to the record, the applicant has no land, except two kacha houses. The kacha houses to which reference has been made by the Collector *stricto sensu* would not fall within the provisions of Section 60 (ccc) and 33(1)(a) of the Code. There is nothing on the record to show that after the passing of the order by the appellate Court on 17th April, 2004, the financial position of the applicant-appellant has improved and he has either acquired some land or some liquid cash.

(Para 5)

S.C. Chhabra, Advocate *for the appellant.*

Pawan Malik, Advocate for C.M. Munjal, *Advocate for the non applicant.*

### JUDGMENT

**M.M. KUMAR, J :**

(1) This is an application filed by Jagga Singh, applicant under Order XLIV read with the provisions of Order XXXIII of the Code of Civil Procedure, 1908 seeking permission to prefer the present appeal as an indigent person. When the matter came up for consideration on the last date of hearing it was pointed out that the learned lower appellate Court has also entertained such an application permitting the appellant to file appeal as an indigent person. Accordingly, the aforementioned order was required to be placed on the file, which has now been done by filing C.M. No. 1333 C of 2006. Copy of the order dated 17th April, 2004 shows that after considering various contentions, the learned lower appellate Court has concluded that the appellant was not in a position to pay the requisite court fee prescribed for filing the appeal. The view of the appellate Court is discernible from para 9 of the order which reads as under :

“I have considered the contentions of both the side in the light of evidence on record. In the respective affidavits both the parties have struck to their respective stand taken in their pleadings. In the cross-examination, however, Sadha Singh failed to bring any evidence which may support the application of Jagga Singh. He failed to tell for want of knowledge how much land Jagga Singh applicant had in the village. He expressed ignorance even as to the fact of sale of any land by Jagga Singh to Ravinder Pal Singh. In his own statement Ex. AW 2/A Jagga Singh not only

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reiterated his stand as taken in the application but also stood well in the cross-examination by stating that he did not receive consideration from Ravinder Pal Singh *qua* the land he has already been sold to him and that he has got now no land in village Ghanjan Kalan. In cross-examination Jagtar Singh as RW 1 has admitted that Jagga Singh has got no land except the land in dispute. This witness admitted that sale proceeds of land allegedly sold by Jagga Singh in favour of Ravinder Pal Singh were not given by the latter to him in his presence Collector report dated 29th November, 2002 has further confirmed that Jagga Singh has no land. Therefore, there is sufficient material in support of the fact that Jagga Singh is not in a position to pay the requisite Court fee prescribed for filing the appeal. The property which is the subject matter of the suit cannot be taken into account while considering such application as per the settled position of law in this respect. Applicant cannot be compelled to withdraw the amount deposited by the respondents on account of balance sale consideration in the Court of Civil Judge (Sr. Division), Ferozepur for payment to the requisite court fee to his detriment. Therefore, issue No. 1 is decided in favour of the applicant?"

(2) Notice of the application was issued. Shri Pawan Malik, Advocate has put in appearance on behalf of the non-applicant-respondents.

(3) Shri S.C. Chhabra, learned counsel for the applicant-appellant has argued that the position of the applicant after the decision of the learned lower appellate Court on 17th April, 2004 has not undergone any change as the applicant has not acquired either any liquid cash or any other property after the passing of the aforementioned order. The sale of the property by the appellant in favour of Ravinder Pal Singh has also been taken into account and it has been concluded that no sale consideration passed on to the applicant-appellant which is alleged to be paid by Ravinder Pal Singh. Learned counsel has maintained that the report of the Collector dated 29th November, 2002 has also confirmed that the appellant had no land.

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(4) Shri Pawan Malik, learned counsel for the non-applicant has, however, argued that under Order XLIII(1)(a) and Order XXXIII Rule 5(e) of the Code, the appellant cannot be granted any relief and his application for declaring him as an indigent person is required to be rejected because the subject matter of the appeal has been transferred and the interest of third party has come into existence. According to the learned counsel, once Ravinder Pal Singh has acquired the interest in the land sold by the applicant-appellant then the provisions of Order XXXIII Rule 5 of the Code would be attracted to the facts of the present case and the application is liable to be rejected. Another contention raised by the learned counsel is that under Order XXXIII Rule (1)(a) of the Code the applicant-appellant cannot be considered to be possessed of sufficient means as he had two kacha houses. The aforementioned position emerges from the perusal of para 7 of the order dated 17th April, 2004 passed by the learned lower appellate Court.

(5) Having heard the learned counsel for the parties and perusing the record I am of the view that the appeal has been presented in accordance with the provisions of Order XXXIII of the Code personally by the applicant to the Registry of this Court. In the order dated 17th April, 2004, the learned lower appellate Court has accepted him as an indigent person and the fact that he had sold the land to Ravinder Pal Singh has also been considered. However, the same has not influenced the learned Lower Appellate Court to record the finding in favour of the applicant-appellant because no consideration has passed hands to the applicant-appellant. Moreover, the Collector in his report dated 29th November, 2002 to which reference has been made by the learned lower appellate Court categorically states that according to the record, the applicant has no land, except two kacha houses. The kacha houses to which reference has been made by the Collector *stricto sensu* would not fall within the provisions of Section 60(ccc) and 33(1)(a) of the Code. There is nothing on the record to show that after the passing of the order by the appellate Court on 17th April, 2004, the financial position of the applicant-appellant has improved and he has either acquired some land or some liquid cash.

(6) In view of the above, the application is allowed and the applicant is declared as an indigent person and is permitted to file the present appeal as such.