

(1954) 11 AHC CK 0019

In the Allahabad High Court

Case No : Revision Application No. 100 of 1950

Baba Pawan Das and Another

APPELLANT

Vs

Uttar Pradesh Government

RESPONDENT

Date of Decision : 25-11-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5

Citation : AIR 1955 All 415 : (1955) 25 AWR 173

Hon'ble Judges : Randhir Singh, J;Brij Mohan Lall, J

Bench : Division Bench

Advocate : M.P. Srivastava and Dwarka Nath Srivastava, for the Appellant; B.K. Dhaon, for the Respondent

Final Decision : Allowed

Judgement

Randhir Singh, J.—This is an application in revision u/s 115, Civil P.C., against the order of the Civil Judge, Sitapur, dismissing an application for permission to sue in forma pauperis.

2. It appears that the applicant filed an application for permission to sue in forma pauperis under Order 33, Rule 1, Civil P.C. Notice was issued to the Government and to the opposite party and on the date of hearing of the application the learned Civil Judge dismissed the application on the ground that the suit was barred on the principle of res judicata. The applicant had, it is admitted, instituted a suit for a declaration of his title to the property which was the subject-matter of the dispute in the suit which has given rise to this revision. That suit was ultimately dismissed on the ground that the applicant had omitted to sue for possession. It was after the earlier suit had been dismissed that the applicant, along with one other person, made an application for permission to sue in forma pauperis. In this suit he had prayed for possession also.

3. The learned Civil Judge dismissed the application on the ground that the decision in the earlier suit operated as res judicata and it was not open to the

applicant to maintain a second suit on the same cause of action. One other ground on which the application was opposed in the lower Court was that the suit was also barred by Order 2, Rule 2 of the Code of Civil Procedure. The lower Court has not expressed any opinion on the second point but has given its decision on the assumption that the suit was not barred under Order 2, Rule 2, Civil P.C. The learned counsel for the respondent has conceded in this Court that the view taken by the lower Court on the point of *res judicata* was not correct.

He has, however, argued that the suit was barred under Order 2, Rule 2, Civil P.C. Reliance has been placed on the provisions of Order 33, Rule 5(d) of the CPC in support of his contention that it was open to the lower Court to have gone into the question even at the stage of hearing the application for pauperism. Rule 5 (d) of Order 33, Civil P.C., is as follows: "The Court shall reject an application for permission to sue as a pauper where his allegations do not show a cause of action." This rule has been amended by the Allahabad High Court by the addition of an Explanation, but no such Explanation has been added by the rules framed by the erstwhile Chief Court of Avadh. The question arises as to whether the Explanation would be applicable to districts situate in Oudh after the two Courts have been amalgamated into a single Court. This question, however, need not be decided in this case as it is not material for the decision of this revision.

It has been argued on behalf of the respondent that the words of Rule 5(d) are wide enough to include the consideration of the maintainability of the suit and as such it would be open to the Court hearing an application of this nature to go into the question as to whether the suit was barred u/s 11, Civil P.C., or on any other ground such as limitation. The question came up for consideration before the Allahabad High Court in -- *Bhajja Vs. Mohammad Said Khan* . This case arose before the explanation was added to Rule 5(d) by the Allahabad High Court and it was held that it was not open to the Court in deciding whether the allegations did or did not show a cause of action to decide questions of limitation, or other grounds on which the case could be thrown out on a point of law. Learned Counsel for the respondent has cited some rulings in support of the contention that a suit for possession after a suit for a declaration has been dismissed would be barred under Order 2, Rule 2, Civil P.C. There are also some authorities which have taken the contrary view.

It is, however, not necessary to decide this point in this revision as we feel that even if it be open to the Court to throw out an application for permission to sue as a pauper if a suit is *prima facie* barred by some law, it would not be proper for the Court to enter into complicated questions of law in deciding the application at that stage. It cannot be disputed that the question as to whether a second suit for possession would lie, after a suit for a declaration has been thrown out on the ground that relief for possession had not been asked for, is not altogether free from difficulty and the learned Civil Judge was, therefore, not justified in giving a finding on that point in deciding whether permission should or should not be granted to the applicant to sue as a pauper. The order passed by the lower Court

should, therefore, be set aside. We accordingly set aside the order and remand the case to the Court below with directions to re-admit the same to its original number and to proceed to decide the application in accordance with law keeping in view the observations made by us above. We, however, make no order as to costs. The application for stay is rejected.