(1929) 05 PAT CK 0016

In the Patna High Court

Bank of Behar Limited APPELLANT

Vs

Ramchanderji Maharaj and Others RESPONDENT

Date of Decision : 23-05-1929

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 33 Rule 15, 149

Citation : AIR 1929 Patna 637

Hon'ble Judges : Rowland, J;Jwala Prasad, J

Bench : Full Bench

Judgement

Jwala Prasad, J.—The only point involved in this appeal is whether the plaintiffs'' suit is barred by limitation. The Court below has held that it is not barred. The defendant aggrieved by that decision has come up to this Court in appeal and urges that the view taken by the Court below is erroneous.

2. Shorn of details the plaintiffs instituted a suit in forma pauperis on 21st January 1926, the cause of action having arisen on 24th January 1925. On 26th June 1926 the application to sue as paupers was refused but the Court by the same order allowed the applicants to proceed with the suit on payment of court-fee by 10th July. The court-fee was paid before that date. The contention urged by Mr. Roy appearing on behalf of the appellant is that the suit was barred on the date the court-fee was paid and the order of the Court allowing the plaintiffs to proceed with the case on payment of court-fee is one without jurisdiction. In support of his contention, apart from the consideration of the provisions in the Code of Civil Procedure, reference has been made to various authorities: Chunder Mohun Roy v. Bhuban Mohini Dabea [1887] 2 Cal. 389, Naraini Kuar v. Makhan Lal [1895] 17 All. 526, Abbasi Begum v. Nanhi Begam [1896] 18 All. 206, Aubhoya Churn Dey v. Bissesswari [1897] 24 Cal. 889, Janahdhary Sukul v. Janki Koer [1901] 28 Cal. 427, Keshav Ram chandra v. Krishnarao Venhatesh [1895] 20 Bom. 508 and Sook Lal v. Dal Chand AIR 1922 Rang. 256.

3. All these cases, except the last one of the Rangoon High Court, were decided under the CPC of 1859 or of 1882. In those Acts there was no provision similar to

Section 149 of the present Civil P.C. (Act 5 of 1908). That section gives discretion to the Court to allow the plaintiff to pay the whole or any part of court-fee and upon such payment the plaint in respect of which such court-fee is payable shall have the same force and effect as if the court-fee had been paid in the first instance.

4. Now if the application to sue as paupers be construed to be a plaint the Court had ample discretion u/s 149 to how the plaintiffs, within the time to be fixed by it, to pay the requisite court-fee and the plaint would be deemed to have been properly stamped with court-fee on the date on which it was filed, that is, on 21st January 1926. Mr. Roy contends that the document filed by the plaintiffs in the present case was not a plaint at all and that it could become a plaint only when the application to sue as paupers was granted under Rule 8, Order 33. He says that the application in this case to sue as paupers was not granted and therefore the stage had not reached when the document filed by the plaintiffs became a plaint by virtue of Section 8 of the Act. It is also contended that even if it were a plaint the order refusing the applicants to sue as paupers under Rule 15 of the said order had the effect of rejecting the plaint and the Court had no jurisdiction to grant them time to put in the requisite court-fee and to treat the document as a plaint filed on the date on which it was presented in Court, that is, 21st February 1926.

5. Now Order 33 is headed: "suits by paupers" and the first rule says that subject to the provisions contained therein any suit may be instituted by a pauper. The subsequent rules in that order deal with the procedure prescribed for a suit to be instituted by a pauper. Rule 2 requires that an application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immovable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

6. The provision relating to a schedule of all the properties of an applicant is with a view to find out whether the applicant is or is not really a pauper; and the particulars required to be given as in a plaint are with a view to enable the Court, upon determination that the applicant is a pauper, to proceed forthwith with the trial of the suit without necessitating the filing of a fresh plaint.

7. The document referred to in Rule 2 of the order is a composite document consisting of an application for permission to sue as a pauper and a plaint. Rule 7(3) says that "The Court" after necessary enquiry referred to before "shall then either allow or refuse to allow the applicant to sue as a pauper." Rule 8 says that "Where the application is granted," the application which, as observed above, contains the plaint as well apart from the prayer to sue as a pauper:

shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner etc.

Rule 15 provides:

That an order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of such right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing the application for leave to sue as a pauper.

8. This is all about the point in Order 33 which concerns itself only with the application to sue as a pauper which may either be allowed or refused. If allowed, the application which contains the plaint will be registered and treated as a plaint and the suit shall proceed in all respects as if it was filed on the date on which the application was made. If it is refused, the applicant will be prevented only from filing another application to sue as a pauper. His right to institute a suit in the ordinary way is not at all affected if it is not barred by limitation. But there being in the application all the particulars of a plaint the Court may treat it as a plaint and exercise its discretion u/s 149 of the Code as a document not bearing court "fee and may allow the plaintiff to pay the court-fee and prosecute the suit upon such payment. The contention that the application for permission to sue as a pauper was not a plaint and could not be treated as a plaint unless the application is granted under Rule 8, does not find favour with their Lordships of the Judicial Committee in the case of Stuart Skinner v. William Orde [1897] 2 All. 241. In that case the enquiry as to pauperism of the plaintiff was pending and the Court had neither granted nor rejected it. In the meantime the plaintiff offered to pay the court-fee, and it was held that upon such payment the suit would be deemed to have been presented on the date on which the application to sue as a pauper was filed, and not on the date on which the court-fee was paid.

9. Their Lordships treated the petition as a composite document containing the plaint and the prayer to sue as a pauper. Regarding the view taken by the Allahabad High Court that the petition should be retained as a plaint but that it should be taken to be converted into a plaint only from the day when those fees were paid, their Lordships observed as follows:

Now a petition to sue informa pauperia contains all that a plaint is required to do. By Section 300 the petition shall contain the particulars required by Section 26 of this Act in regard to plaints, and shall have annexed to it a schedule of any moveable or immovable property belonging to the petitioner, with the estimated value thereof, and shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints. Therefore it contains in itself all the particulars the statute requires in a plaint, and, plus these, a prayer that the plaintiff may be allowed to sue in forma pauperis.

10.The provisions in the present CPC relating to suits by paupers correspond with the provisions contained in the Acts of 1859 and 1882. Besides that, from Rule

15, Order 33 of the present CPC the words "unless precluded by the rules for the limitation of suits" contained in Section 310 of the Code of 1859 have been deleted. This is obviously so because the Court is now vested by Section 149 of the present Code to treat the plaint originally filed, without any court-fee or with insufficient court-fee, as validly filed on the original date although court-fee is paid subsequently under the orders of the Court on the date when it is barred by limitation. The Madras High Court in the case of Marea Thangathammal v. Iravatheeswara Aiyar (1915) M.W.N. 228, held that:

In the case of an application to sue as a pauper, the amendment of the plaint contained in the application to sue as a pauper does not prevent the Court from treating the unstamped amended plaint forming part of the application as a plaint filed on the original date of the presentation of the application and does not prevent the granting of time to pay the necessary court-fees thereon so as to make the amended plaint become a validly stamped plaint presented on the original date.

11. Therefore, an application to sue as a pauper contains an unstamped plaint and the Court can under the power vested in it by Section 149, Civil P.C. permit the requisite stamp to be paid thereon within a time fixed by it and after it has been done the unstamped plaint will be considered to have been validly presented on proper stamp duty on the date when it was originally filed. In this view the decisions relied upon by Mr. Roy on behalf of the appellant will have no application to the present case, inasmuch as they were passed before the new provision contained in Section 149 was made in the CPC of 1908.

12. The point was raised under the present Code on the original side of the Rangoon High Court in the case of Sook Lal v. Dal Chand AIR 1922 Rang. 256. Though the application to exercise discretion u/s 149, was refused, in the circumstances of that case his Lordship Young, J. held that Section 149, gives the Court discretion in the matter. Even before the section was enacted their Lordships of the Judicial Committee in the case referred to above, namely, Stuart Skinner v. William Orde [1879] 2 All. 241, had held that, although the case before their Lordships was not provided for in the Code, the Court had its discretion to accept the Court-fee filed by the applicant to sue as a pauper and treat the plaint as having been filed on the date on which the application to sue as a pauper was filed, and not on the date when the Court-fee was paid. Their Lordships observed that the Court would not be justified in exercising the discretion in favour of the plaintiff where it finds that the plaintiff is guilty of fraud.

13. Therefore, the question whether the Court should or should not have allowed the plaintiff to pay proper Court-fee and to treat the suit as having been presented on the date the application to sue as a pauper was filed, is not a question of jurisdiction for the Court has undoubtedly that jurisdiction vested by express provisions in the Code, but is only a question of discretion and the judicial exercise of that discretion. Nothing has been addressed to us to show

that the discretion exercised in this case was not properly exercised.

14. The appeal must therefore be dismissed with costs.

Rowland, J.

15. I agree. I should like to observe that in my opinion the discretion given to the Court of first instance by Section 149 to accept the plaint on a Court-fee and treat the suit as having been instituted on the date when the application to sue as a pauper was filed, should not be too widely used by the Court in favour of a plaintiff who has failed to establish his right to sue as a pauper. If the Courts use this liberty so freely it seems to me there is danger of fraud on the revenue.