

(1926) 03 PAT CK 0012
In the Patna High Court

Dindayal Rai

APPELLANT

Vs

Indrasan Rai and Others

RESPONDENT

Date of Decision : 23-03-1926

Acts Referred:

Citation : AIR 1926 Patna 472

Hon'ble Judges : Bucknill, J

Bench : Division Bench

Judgement

Bucknill, J.—This was an application in civil revisional jurisdiction. It is a very simple matter and arises in the following way; The applicant here desired to bring a suit in forma pauperis and applied to the First Subordinate Judge of Arrah, claiming a declaration of his title to and recovery of possession of certain property and other reliefs. The plaintiff's allegation that he was a pauper appears to have been substantiated. The suit was admitted and it seems to have progressed to some extent; but after the action had proceeded for some months, the plaintiff, (that is the applicant here) found it necessary to apply to amend his claim in respect of the description of the property to which he claimed possession. The Subordinate Judge however thought that the amendment which the plaintiff asked for was of such a far-reaching character as to alter materially the form and nature of his claim; and, in consequence, on 16th August 1924, he passed an order refusing to allow the plaintiff to make the amendment which he asked to make but allowing the plaintiff to withdraw from the suit with permission for fresh suit.

2. But the Subordinate Judge adds:

Plaintiff must pay defendants' costs incurred up to date as a condition precedent for instituting a fresh suit.

3. Now on 24th October 1925, the plaintiff made a fresh application to the First Subordinate Judge of Arrah asking that he might be allowed to bring his fresh suit again in form pauperis. It was undeniable that the plaintiff was a pauper, but

the defendants" pleader, when the matter came up before the Subordinate Judge on the 24th October last, drew the attention of the Court to the fact that the plaintiff had not yet paid the costs which he had been ordered to pay to the defendants in the previous suit which he had been allowed to withdraw. The learned Subordinate Judge, remarking that it had been directed that the payment of these costs was imposed upon the plaintiff as a condition precedent to his liberty to commence a fresh suit, thought that the fresh suit could not be entertained at all until these costs were paid.

4. It is true that the pleader for the plaintiff asked for some time so that he could find money to pay these costs; but the Subordinate Judge, for no particular reason, at least, for no good reason, stated that no time would be allowed. In consequence, the Subordinate Judge refused to entertain the application of the plaintiff at all and dismissed the application made by the plaintiff to be regarded as a pauper and consequently his application to bring this second suit stood also dismissed.

5. Now, I think it is quite clear that this order was one which could not and should not have been made. The case of *Kuldip Singh Vs. Kuldip Choudhuri*, decided by Chamier, C.J., and Sharfuddin, J., and the case of *Deb Kumar Roy Choudhury v. Deb Nath Barna Bipra* AIR 1920 Cal 897 show quite clearly that the order which the Subordinate Judge made on the 24th October last was one which cannot be supported. In the last of the two cases quoted, it was held that where a plaintiff is allowed to withdraw a suit with liberty to bring a fresh suit on his depositing the costs of the defendant within a specified time, but where the order contains no direction to the effect that on failure to pay within that time the suit will stand dismissed, the nonpayment of such costs within the time specified does not bar the fresh suit. The only course to be adopted by the Court in such a case is to stay the hearing of the fresh suit until the costs are paid, and when they are paid to proceed with the trial of the fresh suit. It will be seen that that case which I have just quoted is an even stronger case than the one which is the subject-matter of the present application now before me. The question as to the applicant being a pauper or not is, for the moment, quite beside the mark. Now, it is clear therefore that what the Subordinate Judge should have done was to have considered the question as to whether the plaintiff was or was not a pauper; and, if, as undoubtedly" it would appear would have been the case, he had come to the conclusion that the plaintiff was a pauper then he should have admitted his suit; but stayed its progress until the costs, which had been ordered to be paid in the previous suit by the plaintiff to the defendants, had, in fact, been so paid. But instead of this he refused to take any steps to inquire whether the plaintiff was a pauper and in consequence he rejected the application for the institution of the fresh suit as a corollary.

6. Now, by 21st November, that is to say, less than a month after the order made by the Subordinate Judge on the 24th October last, the plaintiff had, in fact, deposited the costs of which he had been mulcted in the first suit brought by

him; and on that date he made an application to the Court for permission to sue afresh. But the Subordinate Judge thinking that he was bound by his former decision of the 24th October came to the conclusion that he must reject; both the application to sue in forma pauperis and the application to bring a fresh suit. I suppose he thought that in view of his earlier order he was debarred from reopening the matter. This may or may not be so, but I have no hesitation in coming to the conclusion that as the order of 21st November 1925 was rightly or wrongly based upon the order of 24th October 1925, which was patently a bad order, the latter order as well as the penultimate order must both be set aside. The order of 21st November 1925 of the Subordinate Judge as well as the order of the Subordinate Judge of 24th October 1925 will therefore both be set aside. The Subordinate Judge must now hear the application made on 21st November 1925 de novo: he must first consider whether the plaintiff is a pauper, and if he decides that he has made out satisfactorily that he is a pauper he should, subject to any other provisions of the law relative thereto, permit the plaintiff to commence and continue his fresh suit.

7. As I have said before, the costs which the plaintiff was ordered to pay when he was allowed to withdraw his previous suit as a condition precedent to his being allowed to bring a fresh suit, have now been paid or deposited and there should therefore be no further obstacle in the way of his prosecuting his claim.