

(1950) 02 PAT CK 0003
In the Patna High Court
Case No : Civil Revision No. 683 of 1949

Gupteshwar Missir

APPELLANT

Vs

Chaturanand Missir and Others

RESPONDENT

Date of Decision : 24-02-1950

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2, Order 33 Rule 5, Order 33 Rule 6, Order 33 Rule 7, Order 33 Rule 8

Citation : AIR 1950 Patna 309

Hon'ble Judges : Sinha, J; Rai, J

Bench : Division Bench

Advocate : A.B. Saran and K.N. Chaturvedy, for the Appellant; N. Bagchi and R.K. Bagchi, for the Respondent

Final Decision : Allowed

Judgement

Sinha, J.—The petitioner made an application for leave to sue in forma pauperis. In due course, the defendants appeared after notice and contested the application on the grounds, inter alia, that the plaintiff was a man of means, and could pay the court-fees chargeable on the plaint; that the suit was a champartous one, that the plaintiff had under-valued the property in suit; and that, on a proper valuation of the subject-matter of the suit, it would be beyond the pecuniary jurisdiction of the Court--in this case the Munsif's Court at Buxar. The defendants' pleader asked the Court to decide the preliminary question of jurisdiction in the first instance, before going into the merits of the plaintiff's application for leave to sue as a pauper. The plaintiff's pleader contended that the Court, at that stage, had no jurisdiction to go into that question, and that, after the leave prayed for had been granted, and the plaint registered as a suit, the Court could go into the question as a preliminary issue in the suit after the defendants had filed their written statement, challenging the valuation of the subject-matter of the suit, and the pecuniary jurisdiction of the Court dependent upon that valuation. The learned Munsif, relying upon certain decisions, presently to be noticed, accepted the defendants' contention, and decided to go into the

preliminary question of valuation in the first instance. Aggrieved by that determination of the Court below, the plaintiff-applicant has moved this Court in revision.

2. The matter came, in the first instance, for hearing before a single Judge of this Court who referred it to be heard by a Division Bench.

3. The only question for determination in this case is whether the Court below was entitled to go into the question of valuation of the subject-matter of the suit to determine its pecuniary jurisdiction as a preliminary question before deciding the merits of the application itself. The answer to this question must naturally depend upon the interpretation of the provisions of Order 33, Civil P. C., relating to "Suits by Paupers." It is not disputed in this case that the provisions of Rules 2, 3 and 4 of Order 33 of the Code have been duly complied with. The argument on either side in this case has centred round the provisions of Rules 5 to a of Order 33 of the Code. It may be mentioned, at the outset, that there is no direct decision of this Court bearing on the question in controversy certainly none has been brought to our notice. Order 33, Civil P. C., does not, in terms, make any provision for return of the application for leave to sue as a pauper, in the event of the Court coming to the conclusion that the proposed suit, in connection with which the application for leave had been made, was beyond the pecuniary jurisdiction of the Court; nor, as will presently appear, is there any provision for recording evidence on the question of the true valuation of the property in question. Rule 5 of Order 33 lays down the circumstances in which the Court shall reject the application for permission to sue as a pauper. The only relevant clause of that rule is (d), that is to say, where the allegations in the application do not show a cause of action. Rule 6 provides for reception of evidence on the question of the applicant's pauperism, so that the applicant is entitled to adduce evidence in proof of his pauperism, and the party opposing the application is entitled to adduce evidence to the contrary. Rule 7 provides that, after reception of evidence, as aforesaid, and hearing of argument, the Court has to decide whether the application should be allowed or refused. Rule 8 provides that, in the event of the application for leave to sue as a pauper being granted, it shall be numbered and registered as a plaint in the suit to be proceeded with in the ordinary course, without payment of court-fees on the plaint. Rule 16 provides that, on the application being refused, no fresh application for leave to sue as a pauper in respect of the same right to sue shall be entertained, but that the applicant may institute a suit in the ordinary manner, that is to Bay, on payment of court-fees, provided that costs of the party opposing the application for leave to sue as a pauper must first be paid. It will thus appear that no provision has been made in Order 33, and particularly in Rules 6 and 7, for the reception of evidence on the question of valuation of the property to determine the pecuniary jurisdiction of the Court, if and when that preliminary question is raised in controversy. It will also appear that the rules in Order 33 contemplate either the granting or the rejection of the leave prayed for but not the return of the document which case law has described as of a composite nature comprising an

application to sue as a pauper and a plaint. It is only upon the application being granted that the document ripens into a plaint in the suit under Rule 8. So long as the leave prayed for has not been granted, it is not deemed to be a plaint, and, therefore, cannot be returned as such, if the Court were to take the view that it was beyond the pecuniary jurisdiction of the Court. Hence, on a plain reading of the provisions of Order 33, it is clear that the rules therein laid down do not contemplate an enquiry into the valuation of the property in question with a view to determining whether the subject-matter of the dispute was or was not within the pecuniary jurisdiction of the Court.

4. But it has been argued on behalf of the petitioner that the provisions of Order 7, Rule 10, read with those of Section 111 of the Code, entitled the Court to return the application for leave to sue as a pauper to be presented to the proper Court. But, in my opinion, this contention is not well-founded. Order 7 relates to plaints, and, as already pointed out, such an application is not deemed to be a plaint until it has been, granted. Section 141 of the Code has the effect only of assimilating the procedure in relation to suits to that in relation to all proceedings in any Court of civil jurisdiction. These are generally provisions which, in my opinion, are excluded by the specific provisions laid down in Order 33 of the Code. It is true the Code is not exhaustive, but certainly it is exhaustive in matters specifically provided for. An order returning a plaint to be presented to the proper Court is an appealable order, so that, if the Court of First instance has determined the question of its jurisdiction one way or the other, it is open to the aggrieved party to prefer an appeal from that order to the appellate Court. But the question arises--Is an order returning the application for leave to sue as a pauper to be presented to the proper Court such an order as comes within the purview of Order 43, Rule 1 (a) ? In my opinion, it cannot come within the purview of Clause (a) of Rule 1 of Order 13, because, at that stage, the application for leave to sue as a pauper could not be deemed to be a plaint. On the other hand, if the Court found that the applicant is not subject to any of the prohibitions contained in Rule 5 of Order 33, the Court naturally would grant the leave prayed for. On such leave being granted, the application would ripen into a plaint. The contesting party then would have an opportunity of raising the question of the Court's jurisdiction, pecuniary or otherwise, and the Court would then have the necessary power to go into the question of the valuation of the property with a view to determining the question of jurisdiction. If the Court came to the conclusion that the matter was beyond the pecuniary jurisdiction of the Court, it would naturally return the plaint to be presented to the proper Court, and the aggrieved party may avail itself of the right of appeal. But it was argued on behalf of the opposite party that the determination of the question of pauperism by the Court returning the plaint would not be binding on the Court to which the plaint may be presented in due course. The Second Court will have the jurisdiction to determine for itself the question of the applicant's pauperism. Hence, it was argued that such a course would lead to duplication of proceedings under Order 33 of the Code. That is so. But, in my experience, such

contingencies are rare, inasmuch as litigants are more prone to exaggerate the value of the property in suit, if a prayer for permission to sue as a pauper is to be made, than to under estimate the value of the property. In most of such cases, it is generally found that, in order to become qualified for suing as a pauper, the applicant very much over estimates the value of the property is dispute, so as to make it out that the large amount of court-fees payable on the plaint is beyond the means of the applicant.

5. The decision of this Court in the case of Bihari Sahu and Others Vs. Mt. Sudama Kuer and Others, ,was cited as an instance of the application u/s 141, Civil P. C., to a matter arising under Order 33 of the Code. But that case is an authority only for the proposition that the Court hearing such an application has jurisdiction to allow amendment of the application, as Order 6 of the Code was not exhaustive of the powers of the Court in such matters. In that case, their Lordships pointed out that this Court had ruled in the case of Sheikh Muhammad Nasrullah Vs. Sheikh Muhammad Shukurullah, that the Court had no jurisdiction to take evidence on the question of limitation with a view to seeing whether the claim was or was not barred by limitation. Hence, apart from authority, the interpretation of the rules of Order 33 of the Code leads me to the conclusion that it was not open to the Court below to go into the question of valuation of the property, so as to determine the preliminary issue of jurisdiction, because that is a matter which arises only after the application has been granted and the application treated as a plaint, in answer to which the defendant has to raise his pleas in bar of the suit or of the jurisdiction of the Court,

6. The authorities bearing on the question may now be examined. Very strong reliance was placed both here and in the Court below on the decision of a single Judge of the Madras High Court in the case of Periyasami Padayachi v. Ulaganathan AIR 36 1949 Mad 162 : ILR 1949 Mad. 333. It has been ruled in that decision that it is the imperative duty of a Court, when a preliminary objection as to jurisdiction is taken, to decide that question at the earliest stage of the trial, and that, if the Court, on such an enquiry came to the conclusion that the matter was beyond its pecuniary jurisdiction, it should return the application for presentation to the proper Court. The learned Judge in the Madras High Court relied greatly on the decision of their Lordships of the Judicial Committee in the case of Stuart Skinner v. William Orde 2 ALL. 241 : 6 I. A. 126 PC. That was a case arising under the Code of 1859. In that case, an application was made for permission to sue as a pauper; but, during the pendency of the application, the applicant obtained funds, with which he paid the court-fees, and, thereupon, his application was registered as a plaint. The question that was decided by their Lordships of the Privy Council was that, for the purposes of limitation, the suit will be deemed to have been instituted on the date the pauper application was filed, and not on the date when it was treated as a plaint on payment of full court-fees. Their Lordships based their conclusion on the terms of the Limitation Act (Act IX [9] of 1871) which they have quoted in the penultimate paragraph of their judgment and which specifically provided that, in

the case of a pauper, the suit would be deemed to have been filed when the application for leave to sue as a pauper was made. That decision of their Lordships has naturally and necessarily been followed by all the Courts in India. In this Court also, a Division Bench has held that the document referred to in Rule 2 of Order 33, Civil P. C. is a complete document consisting of an application for permission to sue as a pauper and a plaint--see *Bank of Behar Limited Vs. Ramchanderji Maharaj and Others*, . The learned Judge of the Madras High Court also referred to the terms of Rule 5 of Order 33 and the corresponding clause in the old Code which contained the words: "That his allegations do not show a right to sue in such Court" Those words have been substituted by the words "the allegations do not show a cause of action," which naturally have very much enlarged the scope of the enquiry by the Court. But even then, in my opinion, there is no warrant for the conclusion that the Court had been empowered to hold an enquiry into matters bearing upon its pecuniary jurisdiction. The Court, in every case, is confined to the "allegations" in the application. Hence, it is open to the Court, if it can come to that conclusion on the allegations in the petition, to hold that, on these allegations, the matter was beyond its pecuniary jurisdiction. By way of illustration, it may be supposed that the applicant for leave to sue as a pauper stated in his petition that the real value of the property in dispute was five thousand rupees but that he valued his relief only at three thousand rupees, apparently with a view to bring the matter within the pecuniary jurisdiction of the Court in which the application was filed. It will be open to the Court to throw out the application on the ground that it was beyond its pecuniary jurisdiction. But the provisions of Order 33, which have laid down with a good deal of particularity, the procedure to be followed by the Court when dealing with an application of this kind, do not contemplate an enquiry, that is to say, reception of evidence, pro and con, on the question of the valuation of the property. Such a question is more pertinently raised in the defendants' pleadings in answer to the plaint, if and when the permission to sue as a pauper is granted. A large number of decisions have been noticed in the Madras decision, referred to above; but none of them, so far as I have been able to see, except the Allahabad ruling presently to be discussed, is directly in point. It must be remembered that a case is an authority for what it has actually decided, and not for what may logically follow from that decision. The document may answer to the description of a plaint, and may have the effect of a plaint on being admitted, but is not a plaint so long as the leave has not been granted, or the necessary court-fees paid thereon.

7. Another single Judge decision of the same Court in the case of *Eswaramma v. Chinna* AIR 1949 Mad. 417 : 1948 M. L. J. 623 has taken the same view, following mainly the decision referred to above. In that case, the learned Judge also relied upon an amendment of the original Rule 5 (d) of Order 33 of the Code, which amendment does not find place in the Code as amended by this Court. The other decisions of Madras High Court in *Swaminatha v. Gopalaswami* A. I. R. 1939 Mad. 81 : 183 I. C. 546 : *In Re: Labhai alias Sheik Abdul Khadir*

and Another, and Brahamaramba v. Seetharamayya A. I. R. 1947 Mad. 405 : (I. L. R. (1947) Mad. 820) of the Calcutta High Court in Jagadiswari Debi and Others Vs. Tinkari Bibi and Others, and of the Bombay High Court in Totaram Ichharam Wani Vs. Dattu Mangu Wani, , are not cases directly in point. They have only been relied upon to show that, in proceedings commenced under Order 33, Civil P. C. certain matters, which ordinarily can be gone into in a suit, have been entertained by the Court holding the enquiry. But those are matters incidental to the institution of a claim to property.

8. On behalf of the petitioner, reliance was placed upon the decision of a Division Bench of this Court in the case of Tulshi Mahatani v. Gajadhar Marwari 61 I. C. 891 which has laid it down that it is not open to a Court to investigate the question whether the applicant has overruled his claim in order to enable him to sue as a pauper. That decision has not discussed the relevant provisions of the Code, though it may incidentally help the petitioner's contention. The decision of the Allahabad High Court in the case of Nur Muhammad v. Jamil Ahmeed 62 I. C 683 : A. I. R. 1919 ALL 213 supports the petitioner's contention that the provisions of Order 33, Civil P. C. do not entitle the Court to return an application for leave to sue as a pauper for presentation to the proper Court.

9. Apparently, there is a divergence of judicial opinion on the question in controversy in the present case; but I would prefer to act upon the plain words of the statute as contained in Order 33 of the Code, and hold that the Court in the present case exceeded its jurisdiction in deciding to go into the question of valuation of the property in order to determine the question of jurisdiction.

10. The application is, therefore, allowed, and the order of the Court below set aside. It is directed that the Court below should determine the question of the petitioner's pauperism as quickly as possible. In the special circumstances of this case, there will be no order as to costs.

Rai, J.

11. I agree.