

(1935) 01 CAL CK 0042
In the Calcutta High Court

Jagadiswari Debi and Others

APPELLANT

Vs

Tinkari Bibi and Others

RESPONDENT

Date of Decision : 22-01-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 149

Citation : AIR 1936 Cal 28 : 160 Ind. Cas. 586

Judgement

1. This is an appeal by some of the defendants in a suit brought by the plaintiffs for recovery of joint possession to the extent of a seven--annas share in the lands described in the plaint, on declaration of their title. The suit as instituted was necessitated by an order passed against the plaintiffs under Order 21, Rule 100, Civil P. C. It appears that there was an application made by the plaintiffs to the Court for permission to sue as paupers, the application was made on 7th June 1926, within the period of limitation prescribed for the institution of a suit of the description contemplated by Article 11--A, Schedule 1, of the Indian Limitation; it contained all the materials necessary for a plaint, and the application was in accordance with the rules prescribed for presentation of an application for leave to sue as--a pauper:. The application for leave to sue as pauper was refused on 30th January 1928, and on 8th February 1928, time was allowed by the Court for payment of court--fees payable on the plaint which was considered by the Court to have been filed on 7th June 1926. The plaint was subsequently registered by order of the Court, on payment of court--fees as directed on 4th April 1928.

2. The suit as registered on payment of court--fees was resisted by the contesting defendants, the appellants in this Court, on the ground of limitation; it was pleaded in defence that the suit was barred by one year's limitation from the date of disposal of the claim made by the plaintiffs under Order 21, Rule 100, Civil P. C. There was another ground on which the suit was contested by the defendants; it was on this ground that the plaintiffshad no title to the lands in suit inasmuch as the same had been completely extinguished by a sale in execution of a decree for rent in respect of a tenancy which was fully represented

by the defendants., in the suit for rent. The Courts below negated both the defences raised by the contesting defendants and agreed in passing a decree in favour of the plaintiffs as prayed by them in the suit.

3. The question whether the title of the plaintiffs had passed by the sale in execution of the rent decree, is concluded by the findings concurrently arrived at by the Courts below and cannot be allowed to be agitated in this appeal. The plaintiffs on the findings on evidence come to by the lower Courts were entitled to a decree as claimed by them, in the suit if their claim was not barred by limitation

4. The decision of the Courts below on the question of limitation was challenged in this appeal on the ground that the plaintiffs' suit should be regarded as having been instituted on the date on which court--fees were paid, and not on the date on which the application to sue as pauper was filed; it was argued that the application for leave to sue as a pauper having been rejected on 30th January 1928, and the proceedings in that connection having terminated on that date, there was no case pending before the Court and the Court had no power u/s 149, Civil P. C., to grant any time or extend the time for payment of court--fees on the plaint.

5. In our judgment, the position must be recognized as settled by the pronouncement of their Lordships of the Judicial Committee of the Privy Council in the case of *Stuart Skinner v. William Orde* (1878) 2 All 241, that the document mentioned as an application for permission to sue as a pauper in Order 33, Rule 2, Civil P. C., which contains all the particulars that the law requires to be given in a plaint and in addition a prayer that the plaintiff might be allowed to sue as a pauper, is a plaint required to be filed in a suit, and the refusal by the Court to grant the prayer of the plaintiff to sue as a pauper, and termination of the proceedings in the matter of granting or refusing leave to sue as a pauper, does not amount to rejection of plaint, so far as the plaintiff was concerned. If the position under the law is as it must be held to be the case that the plaint was before the Court, and it was a document on which proper court--fees had not been made by virtue of a refusal of the prayer of the plaintiff to sue as a pauper, the provisions of S. 149, Civil P. C., could come to the assistance of the plaintiff. The view taken by the Patna High Court in the case of *Bank of Behar v. Sri Thakur Ram Chanderji* (1929) Pat 637, which follows closely upon, and gives effect to the pronouncement of the Judicial Committee in *Stuart Skinner v. William Orde* (1878) 2 All 241, referred to above, is in our judgment, the correct view of the law, applicable to the facts of the case before us, so far as the question of limitation involved in it goes; and we have no hesitation in agreeing with the same.

6. In the course of argument reference was made to decisions in cases mentioned below in support of the appeal: *Auhoya Churn Dey Ray v. Bisseswari* (1897) 24 Cal 889.; *Keshab Ramchandra v. Krishnarao Venkatesh* (1896) 20 Bom 508.; *Keshavlal Hiralal Vs. Mayabhai Premchand*, ; *Mg Wa Tha v. Abdul Gani*

Osman (1913) 18 I C 518.; Protap Chand v. Atmaram 1933 Nag 237. Some of these decisions, it would appear, were given before the provisions contained in Section 149, Civil P. C., were enacted; in others, not only the provisions of Section 149 of the Code, but also the pronouncement of the Judicial Committee in *Stuart Skinner v. William Orde* (1878) 2 All 241, case referred to above, which has a direct bearing on the question of limitation raised in the case before us, were not kept in view.

7. In the result, the appeal is dismissed with costs. The decision and decrees of the Courts below are affirmed.