

(1947) 04 PAT CK 0005
In the Patna High Court

Jato Singh and Another

APPELLANT

Vs

Mt. Malti Kuer

RESPONDENT

Date of Decision : 14-04-1947

Acts Referred:

Citation : AIR 1947 Patna 474

Hon'ble Judges : Agarwala, Acting C.J.

Bench : Division Bench

Judgement

Agarwala Ag. C.J.

1. This application is by the defendant. One Mt. Rampeyari instituted a suit for cancellation of a deed by which she had sold some property inherited from her father. She sought for and obtained permission to institute the suit in forma pauperis, but died during the pendency of the suit. An application was made on behalf of an infant girl to be substituted in place of Rampeyari and for permission to continue the suit in forma pauperis. The defendant denied that the infant was the daughter of Rampeyari as alleged, or that she was entitled to be substituted in Rampeyari's place. The Court below has directed the infant's name to be substituted in place of the plaintiff, but has observed that the question as to whether she is really the daughter of the deceased is left open and will be disposed of when the suit is heard.

2. Order 22, Rule 5, requires the Court, when a question arises as to whether a particular person is the legal representative of the deceased party, to decide that question, and by this I understand the Legislature to mean, to decide the question forthwith. That appears to be the view taken in Ram Kishun Ojha Vs. Ram Dulari Kuer, . Then with regard to the question whether the petitioner, if she is the legal representative of the deceased, is entitled to continue the suit in forma pauperis, the Court below has made no effort to decide that question, but has observed:

An inquiry as to whether this baby has got property or not will be unnecessary

waste of time and will involve unnecessary cost.

In *Manaji Rajuji v. Khandoo Baloo* (12) 36 Bom. 279 it was held that the privilege of maintaining a pauper suit is a personal privilege granted to people who have no means of carrying on or continuing litigation, and that there was no authority for holding that the representative of a pauper is entitled to continue the suit of his testator or testatrix in forma pauperis unless he is himself a pauper. In *Lalit Mohan Mandal v. Satish Chandra* (06) 33 Cal. 1163 also it was held that an application for leave to sue as a pauper is a personal right, and that it was not open to the legal representative of a deceased applicant to continue the suit until he has shown that he is himself pauper and has obtained leave to continue in that capacity. This decision was approved by a Bench of this Court in *Mt. Bibi Marim Vs. Surajmal and Others*, The decision of the Court below must, therefore, be set aside and the case go back to the Court below to decide the two questions which I have dealt with above. The cost of this application will be costs in the suit. Hearing fee, one gold mohur.