

(1924) 04 PAT CK 0010
In the Patna High Court
Case No : Pauper Case No. 2 of 1924

Mt. Buchan Dai

APPELLANT

Vs

Jugal Kishore

RESPONDENT

Date of Decision : 11-04-1924

Acts Referred:

Citation : (1924) 04 PAT CK 0010

Judgement

Dawson Miller, C.J.—This application which is an application on behalf of the defendant Musammat Bachan Dal to appeal in forma pauperis came before the Court on the 13th August last year when the question arising under the proviso to Order 44, rule 1 was apparently discussed and considered. The learned Judges who heard the application instead of rejecting it as they were entitled to do under Order 44, rule 1, if they had no reason to think that the decree was contrary to law or otherwise erroneous or unjust, admitted the application, that is to say they said that the application will be heard and they ordered notices to be served upon the opposite party and the Government Advocate. The object of that was undoubtedly that an enquiry should be made into the pauperism of the applicant, the Court being satisfied that there was a proper case to present in appeal. We are therefore not concerned with the question now whether the proviso to Order 44, rule 1 has been complied with; but the only question is whether the applicant is a pauper or not. According to the petition which is verified by an affidavit the applicant's means consist of some small articles of furniture and so on the total value of which is Rs. 35.4. In reply to that the opposite party has filed a counter-affidavit saying that this lady about two years ago sold certain property which was the subject-matter of the present suit for Rs. 5,000 and they ask us to assume therefore that it is impossible to suppose that she is a pauper at the present day. In reply to that an affidavit is made on behalf of the applicant admitting that it is quite true that she sold not only this mokarrari property which is in dispute but further that she sold some other property for Rs. 3,000 and this Rs. 3,000 she says she used to pay off the decretal money and debts of her husband now deceased and for other accessory

expenses and that the Rs. 5 000 acquired by the sale of moharrari property in dispute she used for effecting repairs to the temple and that after paying off the debts and repairs she has no money left.

2. In these circumstances it seems to me. that a case is made out. We are asked, however, to order an enquiry to be made into this lady's circumstances and to refer the matter for that purpose to the Court below. Even now the learned Vakil for the opposite party is unable to say what sort of evidence he can adduce, oral or otherwise, to show that this lady has any means. I think that it would be quite useless to order an enquiry. We have sufficient evidence on the record to enable us to come to a conclusion. In my opinion the application should be acceded to.

3. There will be an order granting the applicant leave to appeal in forma pauperis.

4. The costs of this application will abide the result of the appeal.

Mullick, J.

5. I agree.