

(1924) 03 BOM CK 0011

In the Bombay High Court

Case No : Civil Extraordinary Application No.173 of 1923

Nemichand Bhickchand Marwadi

APPELLANT

Vs

Kevalchand Jasraj Marwadi

RESPONDENT

Date of Decision : 10-03-1924

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1924 Bom 440 : (1924) 26 BOMLR 380

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Judgement

Norman Macleod, C.J.—The petitioner in this case applies to the Court u/s 115 of the Code of Civil Procedure. He was a minor and applied through his next friend for permission to sue as a pauper. The minor claimed that he had been adopted by one Parvati who died in April 1920 and his claim to have been adopted by her was resisted by the opponents. The Judge said:--

The minor was the only child of his parents. The father had a shop and the mother ornaments of about Rs. 1500. Besides the father has left a house in Marwar. It is said that the father sold his shop and wife's ornaments before his death, but this is not satisfactorily proved. The adoption deed is not produced, and is said to be missing. No certified copy is produced. These facts show that the applicant is not a pauper and the claim is doubtful.

2. We do not think that the Judge has rightly dealt with the application. On the question whether or not the applicant had sufficient means to pay the Court fees, it would not be sufficient for the opponent to prove that his father had a shop and his mother had ornaments, unless it could be shown that the shop and the ornaments actually came into his possession. Because if his case was correct and he had been adopted into another family, he could not succeed to the property of his natural parents.

3. It has been contended that the real appellant is the maternal uncle, and he

would have to show that he was a pauper before the suit could be instituted in forma pauperis. This question was decided in Venkatanarasayya v. Achemma ILR (1881) Mad. 3 where it was held that the rule of English practice which prevents a minor from instituting a suit -in forma pauperis through his next friend, unless he gives proof not only that he himself is a pauper, but that the next friend is a pauper, should not be deduced from the provisions of the Civil Procedure Code, and that it was only necessary to show, when a minor was seeking to file a suit in forma pauperis, that the minor had no means. We see no reason to differ from that decision We must, therefore, remand the application to the lower Court so that it may be decided definitely whether the minor applicant has sufficient means to pay the Court fees. We note that his application in the lower Court was not resisted by the Government Pleader.

4. Costs of this application to be costs in the cause.