

(1964) 08 GUJ CK 0017

In the Gujarat High Court

Case No : Civil Revision Application No. 149 of 1962

Parekh Ramniklal Gordhandas

APPELLANT

Vs

Jaisval Mathurlal Shankerlal and Others

RESPONDENT

Date of Decision : 27-08-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5, Order 7 Rule 11

Citation : AIR 1965 Guj 214 : (1965) 6 GLR 599

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Advocate : C.G. Shastri, for the Appellant; R.C. Mankad, for the Respondent

Judgement

(1) The order against which this revision application has been filed is an order rejecting an application for permission to sue in forma pauperis on two grounds: (1) That under Order 33, Rule 5, cls. (a) and (d), Civil Procedure Code, whether it is not framed and presented in the manner prescribed by Rules 2 and 3; and (2) that the allegation do not show a cause of action (sic). The second argument is unsound, because the learned Judge has held that the plaint does not show a cause of action. Order 7, Rule 11, C.P.Code, shows that a distinction is made between failure to show a cause of action and bar limitation or of any other law. The two ideas are quite distinct. It is contended that on the date of the suit there must be a subsisting cause of action and reliance is placed on H. Pascal v. Secy. of State, AIR 1934 Rang 111. The bar of limitation does not destroy the cause of action, if any, but only bars the remedy. The two ideas as distinct as seen from Order 7, Rule 11, C.P.Code. The learned Judge is, therefore, wrong in holding that the suit does not show cause of action because it is time barred. He does not give any other reason for holding that the plaint does not show a cause of action.

(2) But on the other point the learned Judge is right because Order 33, Rule 5, C.P.Code, provides that the Court shall reject an application for permission to sue as a pauper where it is not framed and presented in the manner prescribed by

Rules 2 and 3. Rules 2 and 3 read as follows:

"2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits; a schedule of any movable or immovable property belonging to the applicant, with the estimated value thereof shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the appellant in person, unless he is exempted from appearing in Court in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person".

It is conceded in this case the application for permission to sue as pauper did not contain the particulars required by the Rule 2. It is, however, argued that these particulars have been given subsequently, but in view of the clear wording of the Order 33, Rule, 5 C.P.Code, the lower Court was right in rejecting the application for permission to sue as a pauper on the ground that the application did not contain the particulars prescribed by Rules 2 and 3.

(3) This revision application is, therefore, dismissed with costs.

(4) Revision dismissed.