
(1948) 04 MAD CK 0037
In the Madras High Court

Periyasami Padayachi and Another APPELLANT
Vs
Ulaganathan by next Friend Mother, Muthammal and Others RESPONDENT

Date of Decision : 21-04-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1

Citation : (1949) ILR (Mad) 333 : (1948) 61 LW 624 : (1948) 2 MLJ 150

Hon'ble Judges : Yahya Ali, J

Bench : Division Bench

Judgement

Yahya Ali, J.—The minor first respondent filed an application under Order 33, Rule 1 of the Civil Procedure Code, for leave to sue the petitioners who were respondents 1 and 2 in that petition and others, for partition and separate possession of his one-third share in the properties mentioned in the schedules attached to the petition. His father who is the first petitioner here objected to the grant of leave on the ground inter alia that the value of the suit properties is more than Rs. 3,000 and if the petition was to be admitted and registered as a suit, the subject-matter of the suit would be beyond the limits of the pecuniary jurisdiction of the Court of the District Munsiff of Ariyalur.. The objection was overruled by the District Munsiff. This civil revision petition is against that order. The learned District Munsiff relying upon a Bench decision of the Allahabad High Court reported in Nur Muhammad v. Maulvi Jamil Ahmad AIR 1919 All. 213 was of the opinion that the question of jurisdiction could not be considered at that stage as the petition could not be returned for presentation to the proper Court in the event of its being found that the subject-matter of the suit was beyond its pecuniary jurisdiction.

2. The question involved in this revision petition is whether when a petition is presented under Order 33, Rule 1, for leave to sue in forma pauperis and an objection as to pecuniary jurisdiction is raised in limine, the Court can go into that question and if it finds that it has no pecuniary jurisdiction over the matter, can the application be returned for presentation to the proper Court. The matter

is not free from difficulty and there is, as far as I have been able to examine, no direct authority bearing upon this specific question at issue except the decision of the Allahabad High Court cited above. Before examining the decisions cited before me, I may refer to the language of Rule 5 of Order 33, which provides that a Court shall reject an application for permission to sue as a pauper where, "the allegations do not show a cause of action." The corresponding clause of the old section ran thus:

That his allegations do not show a right to sue in such Court.

The expression "cause of action" was substituted for the words "right to sue in such Court" to give effect to a number of decisions of various Courts which held that the clause even as it then stood did not limit the Court to an enquiry whether the right to sue arose within the jurisdiction, but that it had a more extended meaning and that the Court was competent to ascertain if the application showed a good subsisting cause of action capable of enforcement in Court and calling for an answer. It was even held upon the language employed in the old sub-section that questions of limitation could be gone into at that stage as also a question whether the suit contract was void as being immoral and opposed to public policy. It is clear therefore that the amended clause whose object was to adopt the extended interpretation placed by Courts thereupon was intended to have a wider application than the old clause which was *ex facie* confined to the plea relating to the jurisdiction of the Court. In other words even under the narrower expression used in the old clause, it was open to the Court to reject an application for permission where the allegations did not show that the right to sue arose within the jurisdiction, whether territorial or pecuniary of that Court. It is thus perfectly clear that an enquiry as to jurisdiction is well within the province of the Court which has to deal with an application under Order 33, Rule 1. The difficulty arises not so much on account of the competency of the Court in an application for leave to sue in *forma pauperis* to go into the question of its jurisdiction to entertain the application but as to the precise order which can be passed upon the application in the event of its being found on enquiry that the subject-matter of the suit was beyond the limits of its pecuniary jurisdiction. In such a case, is the application to be dismissed or has it to be returned for presentation to the proper Court? The Allahabad High Court held that there is no provision contained in Order 33 entitling a Court to return an application under Order 33, Rule 1 for presentation to the proper Court and it is in pursuance of that decision that the lower Court refused to go into the objection as to the pecuniary jurisdiction that was raised. The learned Judges who decided *Nur Muhammad v. Maulvi Jamil Ahmad* AIR 1919 All. 213 after examining the respective rules of Order 33 concluded that what was presented to the Court was not a plaint but an application and it would reach the stage of a plaint when the application was granted and that the question as to whether the Court had jurisdiction to entertain the suit did not arise before the registration of the application as a plaint. It was also, held that since there was no plaint before the Court, the order must be deemed to be an order returning the application which

was not warranted by Order 33. With great respect to the learned Judges, I am constrained to observe that the view that when an application under Order 33, Rule 1 is presented there is no plaint before the Court is opposed to the decision of the Privy Council in (1880) ILR 2 784 (Privy Council) and this Court has in a series of decisions adopted the view laid down by their Lordships in that case and has held that an application under Order 33, Rule 1 is a composite document consisting of a plaint and an application for being excused from the payment of court-fee. Their Lordships pointed out that a petition to sue in forma pauperis contains all that a plaint is required to do. Their Lordships were dealing with the Code of 1859 and referred to Section 300 which provided that a petition shall contain the particulars required by Section 26 in regard to plaints, and shall have annexed to it a schedule with the estimated value of the properties which shall be subscribed and verified in the manner prescribed for the subscription and verification of plaints. Similar provisions are found in Rules 2 and 3 of Order 33 of the present Code. It was observed by their Lordships:

Therefore it contains in itself all the particulars the statute requires in a plaint, and, plus these, a prayer that the plaintiff may be allowed to sue in forma pauperis.

On the original side of this Court in Chidambaram represented by his maternal grandfather Natesa Mudaliar as his next friend Vs. Nataraja Mudaliar and Others, the question arose whether a Commissioner could be appointed under Order 33, Rule 7 after the filing of a petition for leave to sue in forma pauperis and before the leave was granted. The objection raised to the appointment of the Commissioner was that there was no suit and there were no parties to a suit when the matter was still in the application stage and hence upon the terms of that rule a Commissioner could not be appointed. Gentle, J. (as he then was) referred to the observation of the Privy Council in (1880) ILR 2 784 (Privy Council) that the petition to sue as a pauper became a plaint and the suit must be deemed to be instituted when the application was filed within the meaning of the Statute of Limitations. The learned Judge held on the authority of the Privy Council decision that on the presentation of the petition to sue as a pauper, the suit must be deemed to have been instituted and therefore there must be parties, the parties being those persons cited in the copy of the plaint filed with the petition. The matter was more fully gone into by a Bench of this Court in Dhulipalla Brahamaramba Vs. Dhulipalla Seetharamayya and Others, . The question that arose in that case was whether, if an applicant for leave to sue in forma pauperis dies, during its pendency, his legal representative is entitled to be brought on record and to continue the suit on payment of the requisite court-fee. The entire case-law bearing upon the question was fully reviewed. A reference was made to the decision of the Judicial Committee in (1880) ILR 2 784 (Privy Council) and it was held that an application under Order 33, Rule 1, is in fact a plaint coupled with a prayer to be allowed to sue without payment of the required court-fee. The observation of Krishnan, J., in Balaguru Naidu v. Muthuratnam Iyer (1923) 46 M.L.J. 254 that an application to sue as a pauper is

a combination of a plaint and an application to excuse the payment of the court-fee on it, and the decision of Gentle, J., in Chidambaram represented by his maternal grandfather Natesa Mudaliar as his next friend Vs. Nataraja Mudaliar and Others, to the effect that on the presentation of a petition for leave to sue in forma pauperis the suit should be deemed to have been instituted on that date, were fully approved and it was held that such an application is a composite document, a plaint coupled with a prayer to be allowed to sue without payment of court-fee. This view has also been taken in decisions of other High Courts. The Calcutta High Court in Jagadeeswaree Debee v. Tinkarhi Bibi ILR (1935) Cal. 711 and the Patna High Court in Bank of Bihar, Ltd. v. Sri Thakur Ramchandarji Maharaj ILR (1929) Pat. 439 gave pronouncements to the same effect. The contrary view taken by a Full Bench of the Allahabad High Court in Chunna Mal v. Bhagawant Kishore ILR (1937) All. 22 that an application to sue as a pauper was not a composite document was dissented from by the learned Judges of this Court who decided Brahamaramba v. Seetharamayya ILR (1943) Bom. 138. The Bombay High Court in Totaram Ichharam v. Dattu Mangu ILR (1943) Bom. 138, held that an application for the appointment of a Commissioner to take an inventory could be filed along with a petition for leave to sue in forma pauperis and be dealt with by the Court under Order 33, Rule 7. In that decision Beaumont, C.J., said that he entertained no doubt that the plaint, whether it consisted of the original plaint or of the petition deemed to be a plaint, took effect from the date when the plaint and the petition were presented. I may further point out that in Dhulipalla Brahamaramba Vs. Dhulipalla Seetharamayya and Others, it was held that the petitioner was entitled in law to be brought on record as the legal representative of the deceased applicant for leave to sue in forma pauperis and to continue the suit on payment of the requisite court-fee, a clear distinction being made between the application which abated on the death of the applicant and the plaint that was filed with it with regard to which it was held that the legal representative could continue the proceeding on payment of the court-fee. This was done on the basis that the application for leave to sue in forma pauperis embodied a plaint. In fact at page 122 of the report while dealing with the decisions in Subbiah v. Sundara Boyamma (1927) 54 M.L.J. 582 : ILR 51 Mad. 6997 and Duraipandiyar v. Solaimalai Pillai (1934) 67 M.L.J. 332 : ILR 58 Mad. 169 it was specifically stated that " an application for leave to sue in forma pauperis is a plaint " and that the legal representative of the applicant was entitled to enforce all the rights which he possesses and that Section 149 of the CPC was applicable. The limitation must be deemed to have stopped on the date on which the application for leave to sue in forma pauperis was filed. It will be sufficient to refer to one more decision of this Court in Kuppusami Aiyangar v. Kanagammal (1933) M.W.N. 197 where Pakenham Walsh, J., sitting singly, held that leave granted by one Court to a party to sue in forma pauperis did not enure for the continuation of that proceeding in another Court and that in the other Court leave would have to be asked for de novo. In that case leave to sue in forma pauperis was granted but when the suit came on for trial, the issue was raised as to the value of the subject-matter for the purpose of jurisdiction and

the Court on enquiry found that the subject-matter was beyond its pecuniary jurisdiction and returned the plaint to be presented to the superior Court. When the plaint was presented to the Sub-Court it was rejected on the ground that it must be presented by the pauper in person. There was an appeal against that order to the District Judge who held that the District Munsiff had jurisdiction at the time when it was presented and that it was properly presented. This Court on further appeal held that the appeal lay from the order of the Sub-Court refusing to allow the suit to be filed in forma pauperis and that the proceedings before the District Munsiff were null and void and the presentation of the plaint to the Sub-Court was really an application to sue in forma pauperis and not having been presented in person was rightly rejected. This decision is material for the purpose of this case only to show that even if the application is returned, it cannot be merely presented in the other Court but a fresh application will have to be presented in accordance with the requirements of Order 33. The only question of limitation that arises in those circumstances and which may fall to be decided is whether Section 149 of the CPC would apply or whether the case fell within the ambit of Section 14 of the Indian Limitation Act, but that is a different matter. When a returned application is filed in another Court it does not have the same attributes as a plaint returned for proper presentation.

3. Having regard to the decisions discussed above, the conclusions that emerge are these : An application for leave to sue in forma pauperis embodies a plaint and is for all practical purposes to be treated as a plaint, because if the application is allowed the suit is deemed to have been filed on the date when the application was presented; interlocutory reliefs can be granted as if it were a plaint and as if the parties to the application were parties to a suit. No doubt there is no express provision in Order 33 for the return of an application made thereunder for presentation to the proper Court in a case where the Court found that it had no jurisdiction to entertain it. But firstly there is Section 141 of the Code which provides that the procedure in regard to suits should be followed as far as it can be made applicable in all proceedings in any Court having civil jurisdiction. Secondly there is the fact that the expression in the old clause, viz., "right to sue in such Court" which was sought to be extensively broadened by the expression "cause of action" in the present rule permitted questions of jurisdiction to be gone into even at the application stage. A fortiori under the new rule the Court should have the power and hence the duty to go into those questions as the purpose of the amendment was not to curtail the scope of the rule. Thirdly, even if there had been no express provision in the Code it must be laid down as a fundamental principle of justice that every Court trying civil causes has inherent jurisdiction to take cognizance of questions which cut at the root of the subject-matter of controversy between the parties and a question as to the territorial or pecuniary jurisdiction of a Court to entertain a matter is a question which cuts at the root of the subject-matter of controversy. Vide *Shamu Patter v. Abdul Kadir Ravuthan* (1912) 23 M.L.J. 321 : 1912 L.R. 391. A. 218 : ILR 35 Mad. 607.

4. Applying these principles to the present case, there can be no doubt that the District Munsiff was competent and had jurisdiction upon the hearing of the application to investigate the question whether the subject-matter of the suit exceeded the limits of his pecuniary jurisdiction. He refused to exercise that jurisdiction on the ground that there was no plaint before him and that if he should hold at the end of the enquiry that it fell short of the limit of his pecuniary jurisdiction he had no power under Order 33, to return the application, there being no question of returning the plaint. As I have endeavoured to show that view is based upon the fallacy that an application under Order 33, Rule 1 is not a plaint--a fallacy which was borne in upon the mind of the learned District Munsiff as a result of the decision of the Allahabad High Court. The view of the Judicial Committee as well as of this Court has on the other hand been to the contrary effect. The result is that there is a plaint before the learned District Munsiff embodied in the application and it is his duty to go into the question which has been raised in limine as to his pecuniary jurisdiction over the matter. It will be a waste of time if he should refrain from examining the question of jurisdiction, investigate the pauperism of the applicant, register the application as a suit and then try this issue of pecuniary jurisdiction in limine and find that he has no pecuniary jurisdiction and decide upon returning the plaint for presentation to the proper Court. It is the imperative duty of a Court when a preliminary objection as to jurisdiction is taken to decide that question at the earliest stage of the trial as a determination of that question is preliminary to his authority to entertain the matter or to make any further enquiry into it.

5. The only other matter that remains is as to the particular form in which the lower Court should word its order in the event of its finding after enquiry into the value of the subject-matter of the suit that it exceeded its pecuniary jurisdiction. The question is at this stage, merely hypothetical. But I have said enough in the course of this judgment which will, I imagine, render the District Munsiff the necessary assistance.

6. In the result the civil revision petition is allowed. The lower Court is directed to entertain the objection and dispose of it according to law. In the circumstances of the case, there will be no order as to costs.