

(1927) 02 PAT CK 0017
In the Patna High Court

Raghunath Prasad Sahu

APPELLANT

Vs

Mt. Rampiari Kuer

RESPONDENT

Date of Decision : 01-02-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 44 Rule 1
Limitation Act, 1963 — Section 5

Citation : AIR 1928 Patna 118

Hon'ble Judges : Scroope, J;Adami, J

Bench : Full Bench

Judgement

Adami, J.—This is an application for leave to appeal in forma pauperis. The applicant instituted a suit for claiming a declaration that certain sums of money deposited with a banking business in the name of an idol were joint family property and that he was entitled to a one-sixth share of the amounts so deposited.

2. The learned Subordinate Judge decided that the applicant was not entitled to any of the sums deposited and also that the suit was barred by limitation. His suit was, therefore, dismissed on 28th August 1926.

3. This Court reopened on the 27th October but it was not until the 25th November that the application was made. In that application the applicant sought leave to appeal in forma pauperis and he also asked that u/s 5, Limitation Act, the time for making the application should be extended. On the 1st December the learned advocate for the applicant was heard and an order was passed that notice should issue both on the respondents and the Government Pleader.

4. The applicant was allowed in the lower Court to sue in forma pauperis and it is not shown before us that since permission was granted to him in the lower Court that he has acquired other properties. We have not the materials before us to form any adequate opinion on that point.

5. Now it is uncertain whether the order of this Court passed on the 1st December 1926, referred only to the application for leave to appeal in forma pauperis or also covered the application for extension of time u/s 5. If it referred to the application to appeal in forma pauperis it would seem that under a ruling of this Court in the case of Bhokhari Singh and Others Vs. The King-Emperor, it is not open to us now to consider whether the proviso to Rule 1 of Order 44, Civil P.C., applies, that is to say we cannot examine the question whether the decree of the lower Court was contrary to law or to some usage having the force of law, or was otherwise erroneous or unjust. Even in that case, however, we have to consider the question whether the application could be received as having been filed within time and whether any extension can be granted. (The judgment then discussed the question and held that no further extension should be given.) Now, if we take it that the notice was issued on the respondents and the Government Pleader with regard to the application for extension of time only it would fall upon us to consider whether the proviso to Order 44, Rule 1, should be applied and we should look to see whether the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust. If we were to look into the judgment of the lower Court from this point of view, I would be inclined to say. that there is nothing in the judgment to show that it is erroneous or unjust or that there is anything in it which is contrary to law.

6. The learned Subordinate Judge has found as a fact that though some items are mentioned in the books of the banking business of the idol, the applicant failed to show that he had a claim to any of these items, and also the Subordinate Judge has found as a fact that even if the applicant had a claim to those sums mentioned in those three books, there are entries mentioned in the fourth book which show that the applicant would be indebted to the idol to a larger amount than he could claim under the other three books. From all points of view I would hold that this application for leave to appeal in forma pauperis is an application which should not be allowed especially as it was filed too late. I would reject the application.

7. A month's time will be allowed from this date to the applicant for extension of the time allowed by law for the filing of an appeal with the proper Court-fee.

Scroope, J.

8. I agree.