

(1934) 12 CAL CK 0023
In the Calcutta High Court

S.M. Bose and Others

APPELLANT

Vs

Hafiz Md. Fateh Nasib and Another

RESPONDENT

Date of Decision : 11-12-1934

Acts Referred:

Citation : AIR 1935 Cal 390

Hon'ble Judges : Guha, J;Bartley, J

Bench : Full Bench

Judgement

Bartley, J.—This Rule was issued on the opposite party, calling on them to show cause why two orders made by the learned Subordinate Judge, one allowing the application of the opposite party 1 to continue the prosecution of a title suit in forma pauperis, which application was amended, at the hearing itself, into a prayer for permission to sue in forma pauperis, and a second order restoring to file the said application which had been dismissed for default, should not be set aside. The facts underlying the matter now in question are not in dispute. A title suit No. 144 of 1931 brought by the opposite party las plaintiff was ultimately dismissed by an order of this Court, dated 22nd January 1934. In November 1932, however the plaintiff had filed another application to continue title suit No. 144 of 1931 in forma pauperis, which was numbered as pauper case No. 7 of 1932. This application, which had been di missed for default on 11th November 1933, came up for final disposal on 19th June 1934. At the hearing, the plaintiff altered the form of the application, and urged it as one for permission to sue in forma pauperis. The learned Subordinate Judge held that suit No. 144 had been dismissed long ago, so that the petitioner plaintiff Could not continue it even if it was found that he was a pauper. He went on however to hold that the second application was registered independently, and treated by the Court as an application to sue in forma 3pauperis, and not to continue the suit No. 144 of 1931 in forma pauperis, and that the Court had ample jurisdiction to treat it as an independent application. On the finding therefore that the applicant was a pauper and entitled to sue as a paupar, he allowed the application. We find ourselves entirely unable to assent to the conclusion arrived at by the learned

Judge in the Court below.

2. There was before him, throughout the whole of these proceedings, one single plaint, the plaint in title suit No. 144 of 1931, comprising one cause of action. That suit had been dismissed before the application now in question came up for disposal, and with the dismissal of the suit, the sole cause of action disappeared. It was not therefore within the jurisdiction of the Court to entertain further proceedings in the matter. Nor is it entirely correct to say, as the learned Judge does, that the application was one to sue in forma pauperis, and not to continue the suit in forma pauperis. Apart altogether from any value which can be attached to the distinction thus sought to be made, it is clear from the opening paragraph of the Judge's own order that what he had before him at the actual trial was an application for permission to continue title suit No. 144 as a pauper, and not an application for leave to sue as a pauper. We are accordingly of opinion that the orders made in this case cannot be supported and that they must be set aside. This Rule is therefore made absolute; the orders complained of are set aside and the application dismissed. Petitioner is entitled to his costs in the Rule. We assess the hearing-fee at two gold mohurs.

Guha, J.

3. I agree.