
(1959) 02 AP CK 0014

In the Andhra Pradesh High Court

Case No : C.R.P. No. 19 of 1959 and Appeal No. 163/1 of 1953-54

Sulemani Begum and Others

APPELLANT

Vs

Ghulam Mohammed Shafi Khan

RESPONDENT

Date of Decision : 06-02-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 5, Order 33 Rule 7, 149

Citation : AIR 1960 AP 381

Hon'ble Judges : Srinivasachari, J; Mohd. Ahmed Ansari, J

Bench : Division Bench

Advocate : Mohd. Aslam Khan, for the Appellant; Mohd. Jahangir Ali, for the Respondent

Judgement

Ansari, J.—The appellants are the representatives of the deceased plaintiff. She was the sister of one Ghousia Begum who was married to the respondent. Ghousia Begum belonged to the Sunni Hanafi School of Mohammadan Law and had died leaving as her heirs, her mother, her sister and the husband. The mother had also died leaving the deceased plaintiff as her only heir. The sister in her own light and as her mother's heir has filed a suit, out of which this appeal arises in forma pauperis on Farwardi 11, 1353F. (12-2-1944), Thereby she has claimed hers and the mother's shares in the estate of the deceased sister. The amount comes to Rs. 14,195/- part of it being the dower debt of the deceased from the husband and part being the dowry, which the wife had brought on the occasion of the marriage.

The trial court on Behman 28, 1354 F. (30-12-1944) rejected the application to sue in forma pauperis, and ordered the plaintiff to pay the necessary court-fee. No payment was made within the period thus allowed; but a revision petition was filed against the order in the Hyderabad High Court. That revision petition was dismissed on Isfander 9, 1358F. (January 10, 1949), and after the records were returned the plaintiff has paid the court-fee on Khurdad 4, 1358 F. (April 7, 1949).

It is common ground that in between the rejection of the petition and the payment of the court-fee, the trial court had been fixing dates, but the plaintiff failed to pay till the date mentioned. That date is more than six years from the date, the wife had died, which was on Khurdad 9, 1347 F. (April 13, 1938). An objection was raised in the trial court that as the court-fee had been paid beyond six years of the date, the dower debt had become payable, the suit was barred by limitation.

The trial court has held that the limitation to recover deferred dower debt was six years after the marriage had been dissolved and the plaint could be deemed to have been filed only on the day the court-fee was paid, which being beyond limitation, the claim for the dower debt was barred. Against this decision the plaintiff filed a miscellaneous appeal and has paid the necessary court-fee.

2. It is obvious that as there is no decree in the case, the trial court having decided only one issue, no appeal lay to this Court. A revision, however, lies against the order should the representatives of the plaintiff succeed in showing that because of a legal error the trial court has refused to entertain the suit.

3. The question, which arises for decision, is whether an application to sue in forma pauperis is a composite document so that on its being rejected the application can still be treated a plaint on payment of the necessary court-fees. If it were to be treated as such, the rejection of the prayer to sue in forma pauperis and payment of court-fees on it would justify the document being treated as plaint and the suit would be instituted on the day the application was filed in Court. Admittedly divergence of views exists. One is that the application to sue in forma pauperis is a composite one. Another is that it is not.

The first view has been consistently maintained by the Madras High Court. Indeed in *Dhulipalla Brahamaramba Vs. Dhulipalla Seetharamayya and Others*, Leach C. J., has observed that the practice of the court has consistently been to treat the application as a plaint and regard the suit as having been instituted from the date of presentation of the application itself. Even interlocutory orders, such as the appointment of a Commissioner have been passed on the basis that the suit has been instituted on presentation of the application to sue as a pauper. In *Nellavadiva Animal v. Subramania Pillai* ILR Mad 687 : AIR 1918 Mad 1039 an application for leave to appeal in forma pauperis accompanying an unstamped memorandum of appeal filed in time was rejected by a District Judge. On the reopening day after Christmas holidays the appellant applied for and obtained from the court three weeks' time to pay the court-fee on the memorandum of appeal and the court-fee was paid within the time allowed.

It was held that the appeal was in time and must be deemed to have been filed on the date of its presentation and that the dismissal of the application to appeal in forma pauperis did not necessarily lead to the dismissal of the memorandum of appeal. It was further held that an appellate court has u/s 149 C. P. C. power to grant time to pay the requisite court-fees. In *Thangathammal v. Iravatheswara*

Iyer AIR 1916 Mad 685 it was held that a pauper suit could be converted into a regular suit and limitation was to be reckoned from the date the pauper petition was filed.

It was also held that as a general rule once, the court had admitted and registered a plaint, it could not subsequently reject it; and a court might be taken to have extended the time and to have treated the time when the court-fees were actually paid as the time fixed for payment. There are decisions by single Judges taking the same view. In *Sundarathammal and Another Vs. Paramaswami Asari and Others*, it has been held that though the pauper application be dismissed, the plaint remains still pending until it is actually dismissed and if the court-fees are paid limitation would count from the date of the presentation of the petition, which would be regarded as the date of the plaint. The same view has been taken in *Chidambaram represented by his maternal grandfather Natesa Mudaliar as his next friend Vs. Nataraja Mudaliar and Others*, . This view has been based on the decision of the Privy Council in *Stuart Skinner v. William Orde* 6 I A 126 where a party had applied to sue in forma pauperis, but later having raised funds sufficient to pay the court-fees, paid the amount and on payment the plaint was treated as one having been filed on the date of the application.

4. The counsel for the respondent has argued that the view of the Madras High Court is erroneous because the Privy Council's decision, on which it rests, never decided anything on which the view could be sustained. He relied in support of his argument on several decisions of the Allahabad High Court, of Bombay and of the Hyderabad High Courts. It, however, cannot be denied that the Madras view has consistently been that an application to sue as pauper is a composite document consisting of an unstamped plaint and an application for permission to sue in forma pauperis.

That view is further that if the application is rejected, the plaint still remains, and the court may in its discretion, while rejecting the application, allow the petitioner to pay the requisite court-fee and in such a case the suit shall be deemed to have been instituted on the date of presentation of the application. It is well settled that the decision of the Madras High Court is binding on this court. The counsel argues that the case should be referred to Full Bench. We regret we do not find sufficient ground to unsettle such a series of decisions.

If a voluntary payment of court-fee can convert a document to sue as pauper into a plaint and this proposition is not controverted, so should a payment ordered by court. The prayer to sue in forma pauperis is, therefore, but one of the several prayers, whose inclusion would make the document only a composite document. Therefore, the lower court has erred in treating the suit of the deceased for the dower debt as barred, because the court-fees had been paid after the date of limitation for such debt. The application to sue in forma pauperis was filed earlier and the court-fee has been paid on this application after the prayer to sue as pauper has been rejected.

In these circumstances, we think the lower court has taken a wrong view of law and it cannot be contested that refusal to exercise jurisdiction due to error of law is a good ground for interference u/s 115. We, therefore, allow the appeal as a revision petition and set aside the finding of the trial court. We hold the suit for the dower debt to be within limitation, and the court should now proceed with the merits of the claim. We will not allow costs to the appellants because there was a legal point which the respondent was justified in pressing in the trial court and in this court. Accordingly the revision petition is allowed and the case remanded to the trial court to proceed further.