
(1901) 12 AHC CK 0005
In the Allahabad High Court

Wazir-Un-Nissa

APPELLANT

Vs

Ilahi Bakhsh and Others

RESPONDENT

Date of Decision : 05-12-1901

Acts Referred:

Citation : (1902) ILR (All) 172

Hon'ble Judges : John Stanley, C.J.;Burkitt, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Stanley, C.J. and Burkitt, J.—This is an appeal from a decree of the Subordinate Judge of Dehra Dun in a pauper suit, by which he declared the plaintiff entitled to a one-seventh share of her father's estate. In her claim the plaintiff asked for a decree for possession of one-seventh of her father's property, but the learned Judge only gave her a declaratory decree. A preliminary objection has been raised to the hearing of this appeal, on the ground that no proper memorandum of appeal is before the Court, inasmuch as the application u/s 592 of the CPC was not made by the plaintiff in person, nor by an advocate, vakil or attorney of this Court, and reliance is placed upon the decision of this Court in the case of Shiam Karan v. Raghunandan Prasad I.L.R. (1900)All. 331 in which it was held that the presentation of an appeal by a person who is not an advocate, vakil or attorney of the Court, nor a suitor, is not a valid presentation in law, having regard to Section 8 of the Letters Patent of the High Court. In this case the plaintiff is a pardah-nashin lady, and u/s 404 of the Code of Civil Procedure, it is provided that, notwithstanding anything contained in Section 36, an application to sue in forma pauperis is to be presented to the Court by the applicant in person, unless he is exempted from appearing in Court u/s 640 or Section 641. Admittedly here the plaintiff is entitled to the exemption contained in Section 640 as a pardah-nashin lady. In such a case, therefore, u/s 404, she may present an application by a duly authorized 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 admitted here that the petition was presented by a duly authorized agent, though not by an advocate, vakil or attorney of the Court; and we are of opinion that, having regard *to the provisions of Section 404, the appeal was properly presented, and that the case is not governed by the. decision to which we have referred. We therefore disallow the preliminary objection.

2. As regards the merits of the appeal, it has been admitted by the learned vakil for the respondents that he cannot resist the appeal, the Subordinate Judge having made a mistake in not awarding possession of the share of the property to which the decree referred. We therefore modify the decree by directing, in addition to the declaration of title, that the plaintiff be put in possession of the property specified in the decree.

3. The appeal will be allowed with costs.