

(1933) 12 AHC CK 0013
In the Allahabad High Court

Widdia Pat Upadhiya and Another

APPELLANT

Vs

Mahadeo Shastri and Others

RESPONDENT

Date of Decision : 22-12-1933

Acts Referred:

Citation : (1933) 12 AHC CK 0013

Hon'ble Judges : Bennet, J

Bench : Single Bench

Judgement

Bennet, J.—This is an application in revision of an order of a Munsif rejecting an application to sue as paupers which was made by two plaintiffs who were brothers. The application was rejected apparently under Order 33. Rule 5(a) as the Court found that the application was not framed and presented in the manner prescribed by Rule 2. Rule 2 lays down that with the application there shall be "a, schedule of any moveable or Immovable property belonging to the applicant." The language of this rule is compulsory. The applicants belong to a joint family which embraces their father and grand-father and other members. This joint family owns certain zamindari property and house property. No. mention was made of this zamindari and house property in the schedule. Further no mention was made of a grove or garden and the Court has found that after the present application had been made one of the applicants Vidyapat stated in a deposition that the garden belonged to him. The argument was made by learned Counsel that because these items of property belonged to the joint family, therefore they should not be entered in the schedule because they would not amount to property which would be available as "means" under Rule (1). The Court below has however taken a point that whether the property would or would not provide means under Rule (1), it should be entered in the schedule in order that the Court could come to a determination on the point. The learned Counsel referred to among other rulings that of AIR 1928 24 (Nagpur) That ruling however is against him on this point as it states on p. 27, col. 1:

A mere finding that they are jointly interested in the property held by their joint

father Raibhan would not suffice. It would simply show that they are entitled to property but not that they are possessed of means.

2. According to this ruling therefore there was a distinction drawn between property to which the applicants are entitled and property which shows that they are possessed of means. I think the proposition is entirely untenable that an applicant who is a minor member of a joint family should not enter in the schedule joint family property. In my opinion the applicant ought to enter this property because the property belongs to the joint family of which he is a member. On a partition he is entitled to a share of that property which will then belong to him separately. Obviously property which may one day eventually belong to him separately is property which should be entered in a schedule under Order 33, Rule 2 for the information of the Court. The further question remains in regard to whether such a joint property can be considered as a source of means under Rule 1. In this connection there is a bench ruling of this Court reported in Ram Prasad Singh and Others Vs. Jagatamba Prasad Singh and Others, The same argument was addressed to the Court as is now addressed.

It is argued for the applicants that this share is useless to them because they could not raise money on it...and that no guardian can be appointed for a minor member of a joint family. If this argument is correct, then every minor member of a joint family, except in the rare case of his possessing separate property, must be ipso facto entitled to sue as pauper. We are not prepared to accept this result or to believe, until an attempt has been made, that it is impossible for the minors to obtain funds when it is found that they are possessed of sufficient property.

3. Following this ruling I consider that the existence of joint family property may amount to "means" within Rule 1. I deal with this point because it has been specifically raised in grounds Nos. 2 and 3 of the revision by the applicants. In the result I dismiss this application in revision.