

## APPELLATE CIVIL.

*Before Guha and Bartley J.J.*

JAGADEESHWAREE DEBEE

*v.*

TINKARHI BIBI.\*

1935

Jan. 17, 22.

*Pauper—Application for leave to sue in pauperis is a plaint from date of filing—Refusal of leave, Effect of—Want of proper court-fee—Code of Civil Procedure (Act V of 1908), s. 149; O. XXX, r. 2.*

The document mentioned as an application for permission to sue as a pauper in Order XXX, rule 2 of the Code of Civil Procedure, which contains all the particulars that the law requires to be given in a plaint, and in addition a prayer that the plaintiff might be allowed to sue as a pauper, is a plaint required to be filed in a suit, and the refusal by the court to grant the prayer of the plaintiff to sue as a pauper and termination of the proceedings in the matter of granting or refusing leave to sue as a pauper, does not amount to rejection of plaint.

*Skinner v. Orde* (1) followed.

If the position under the law is, as it must be held to be the case, that the plaint was before the court, and it was a document, on which proper court-fees had not been paid by virtue of a refusal of the prayer of the plaintiff for leave to sue as a pauper, the provisions of section 149 of the Code of Civil Procedure could come to the assistance of the plaintiff.

*Bank of Bihar, Limited v. Sri Thakur Ramchanderji Maharaj* (2), *Aubhoya Churn Dey Roy v. Bissesswari* (3) and other cases not followed and distinguished.

SECOND APPEAL by the defendants.

The facts of the case and the arguments in the appeal appear fully in the judgment.

*Krishnakamal Maitra* for the appellants.

*Girijaprasanna Sanyal, Soureendranarayan Ghosh* and *Bankimchandra Ray* for the respondents.

*Cur. adv. vult.*

\*Appeal from Appellate Decree, No. 1667 of 1932, against the decree of Jateendranath Mukherji, Additional District Judge of Dinajpur, dated April 25, 1932, confirming the decree of Amritalal Banerji, Subordinate Judge of Dinajpur, dated Dec. 6, 1930.

(1) (1879) I. L. R. 2 All. 241 ;  
L. R. 6 I. A. 126.

(2) (1929) I. L. R. 9 Pat. 439.

(3) (1897) I. L. R. 24 Calc. 889.

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The judgment of the Court was as follows:—

This is an appeal by some of the defendants in a suit brought by the plaintiffs for recovery of joint possession to the extent of a seven annas share in the lands described in the plaint, on declaration of their title. The suit, as instituted, was necessitated by an order passed against the plaintiffs under Order XXI, rule 100 of the Code of Civil Procedure. It appears that there was an application made by the plaintiffs to the court for permission to sue as paupers. The application was made on the 7th June, 1926, within the period of limitation prescribed for the institution of a suit of the description contemplated by Article 11A of the First Schedule of the Indian Limitation Act; it contained all the materials necessary for a plaint, and the application was in accordance with the rules prescribed for presentation of an application for leave to sue as a pauper. The application for leave to sue as pauper was refused on the 30th January, 1928, and on the 8th February, 1928, time was allowed by the court for payment of court-fees payable on the plaint, which was considered by the court to have been filed on the 7th June, 1926. The plaint was subsequently registered by order of the court, on payment of court-fees as directed, on the 4th April, 1928.

The suit, as registered on payment of court-fees, was resisted by the contesting defendants, the appellants in this Court, on the ground of limitation; it was pleaded in defence that the suit was barred by one year's limitation from the date of disposal of the claim made by the plaintiffs under Order XXI, rule 100 of the Code of Civil Procedure. There was another ground, on which the suit was contested by the defendants; it was on this ground, that the plaintiffs had no title to the lands in suit, inasmuch as the same had been completely extinguished by a sale in execution of a decree for rent, in respect of a tenancy, which was fully represented by the defendants in the suit for rent.

The courts below negatived both the defences raised by the contesting defendants, and agreed in passing a decree in favour of the plaintiffs as prayed by them in the suit.

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The question, whether the title of the plaintiffs had passed by the sale in execution of the rent decree, is concluded by the findings concurrently arrived at by the courts below and cannot be allowed to be agitated in this appeal. The plaintiffs, on the findings on evidence come to by the lower courts, were entitled to a decree, as claimed by them in the suit, if their claim was not barred by limitation.

The decision of the courts below on the question of limitation was challenged in this appeal on the ground that the plaintiffs' suit should be regarded as having been instituted on the date on which court-fees were paid and not on the date, on which the application to sue as pauper was filed; it was argued that the application for leave to sue as a pauper, having been rejected on the 30th January, 1928, and the proceedings in that connection having terminated on that date, there was no case pending before the court and the court had no power under section 149 of the Code of Civil Procedure to grant any time or extend the time for payment of court-fees on the plaint.

In our judgment, the position must be recognised as settled by the pronouncement of their Lordships of the Judicial Committee of the Privy Council in the case of *Skinner v. Orde* (1), that the document mentioned as an application for permission to sue as a pauper in Order XXX, rule 2 of the Code of Civil Procedure, which contains all the particulars that the law requires to be given in a plaint and in addition a prayer that the plaintiff might be allowed to sue as a pauper, is a plaint required to be filed in a suit, and the refusal by the court to grant the prayer of the plaintiff to sue as a pauper, and termination of the proceedings in the matter of granting or refusing leave to sue as a pauper, does not amount to rejection

(1) (1879) I. L. R. 2 All. 241; L. R. 6 I. A. 126.

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of plaintiff, so far as the plaintiff was concerned. If the position under the law is, as it must be held to be the case, that the plaintiff was before the court, and it was a document, on which proper court-fees had not been paid by virtue of a refusal of the prayer of the plaintiff to sue as a pauper, the provisions of section 149 of the Code of Civil Procedure could come to the assistance of the plaintiff. The view taken by the Patna High Court in the case of *Bank of Bihar Limited v. Sri Thakur Ramchanderji Maharaj* (1), which follows closely upon, and gives effect to the pronouncement of the Judicial Committee in *Skinner's* case (2), referred to above, is, in our judgment, the correct view of the law, applicable to the facts of the case before us, so far as the question of limitation involved in it goes; and we have no hesitation in agreeing with the same.

In the course of argument reference was made to decisions in cases mentioned below in support of the appeal: *Aubhoya Churn Dey Roy v. Bissesswari* (3), *Keshav Ramchandra Deshpande v. Krishnarao Venkatesh Inamdar* (4), *Keshavlal Hirajal v. Mayabhai Premchand* (5), *Mg Wa Tha v. Abdul Gani Osman* (6), *Pratapchand v. Atmaram* (7). Some of these decisions, it would appear, were given before the provisions contained in section 149 of Code of Civil Procedure were enacted; in others, not only the provisions of section 149 of the Code, but also the pronouncement of the Judicial Committee in *Skinner's* case (2), referred to above, which has a direct bearing on the question of limitation raised in the case before us, were not kept in view.

In the result, the appeal is dismissed with costs. The decision and decrees of the courts below are affirmed.

*Appeal dismissed.*

G. S.

(1) (1929) I. L. R. 9 Pat. 439.

(2) (1879) I. L. R. 2 All 241;

L. R. 6 I. A. 126.

(3) (1879) I. L. R. 24 Calc. 889.

(7) [1933] A. I. R. (Nag.) 237; 147 Ind. Cas. 732.

(4) (1895) I. L. R. 20 Bom. 508.

(5) (1907) 9 Bom. L. R. 204.

(6) 18 Ind. Cas. 518.