

[3 Mad. 249.]

## APPELLATE CIVIL.

*The 29th July, 1881.*

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE TARRANT.

Vedanta Desikacharyulu.....Petitioner

*versus*

Perindevamma.....Counter-Petitioner. “

*Application to sue in forma pauperis rejected on improper grounds, Civil Procedure Code Section 401.*

A person who applies for permission to sue as a pauper is not bound to try and raise funds by mortgaging his claims.

IN this case the plaintiff presented a petition to the District Court of *Godavari* for leave to sue as a pauper and adduced evidence of his poverty.

The order of the Court was as follows :—“ The late Judge ordered that the paragraphs 1 to 10 of the plaint disclose no cause of action ; the remaining relief sought for in the plaint is for moveables worth Rs. 2,114, for which the stamp required is Rs. 135. The plaintiff alleges that he was adopted by the first defendant. He does not ask for any declaration that this adoption took place. If this adoption is true and valid, I find it impossible to believe that he cannot raise the small sum required for the prosecution of this suit. If it is not true, then he has his share of the property of his natural family. I refuse to allow him to sue as a pauper. He will pay the costs of the opposing petitioners.”

[250] The plaintiff appealed to the High Court.

*T. Subba Rau* for Petitioner contended that the Judge had misconstrued Section 401 of the *Civil Procedure Code*.

*Mr. Branson* for Counter-Petitioner.

The Court (TURNER, C. J., AND TARRANT, J.) delivered the following

**Judgment** :—The grounds on which the Judge has refused the application are unsound. The question the Judge had to consider was whether the petitioner was a pauper as defined in the explanation to Section 401 of the *Code of Civil Procedure*.† It is not the intention of the law to compel persons seeking relief to mortgage their claims, which would often be effected at a ruinous sacrifice. The petitioner has given evidence that he is a pauper as defined in the Act, and the Judge must find that as a fact he is not. The order

\* C.M.P. 180 of 1881 against the order of B. Horsburgh, Acting District Judge of Godavari, dated 1st November 1880.

Suits may be brought in *forma pauperis*. †[Sec. 401 :—Subject to the following rules, any suit may be brought by a pauper.

*Explanation*—A person is a ‘pauper’ when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred Rupees other than his necessary wearing apparel and the subject-matter of the suit.]

of the Judge is set aside and the case remanded to the Judge that he may pass orders *de novo*. The petitioner will recover the costs of this application from the counter-petitioner.

**NOTES**

[A similar view was taken in (1906) 30 Bom. 593=8 Bom. L.R. 671. See also 7 A.L.J. 119 .

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APPELLATE CIVIL.

[3 Mad. 250.]

The 4th August 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE TARRANT

Sabapathi Chetti.....Plaintiff

*versus*

Subraya Chetti.....Defendant.\*

*Possessory suit—Specific Relief Act Section 9—Partial disturbance of possession.*

A possessory suit lies under Section 9 of the Specific Relief Act when plaintiff's possession has been partially as well as when it has been wholly disturbed.

THIS was a case stated under Section 617 of the *Civil Procedure Code* by the District Munsif of *Villupuram*.

The facts appear in the Judgment of the Court (TURNER, C.J., and TARRANT, J.).

The parties were not represented in the High Court.

**Judgment** :—The plaintiff sued, under Section 9 of the *Specific Relief Act*, for the possession of a house, well, &c., alleging that [251] his divided brother—the defendant—had trespassed upon the property on the 9th January 1881, and retained joint possession of it from that date. Plaintiff's pleader admitted that plaintiff continued to live in the house notwithstanding the trespass complained of on the part of the defendant.

The defendant objected that the suit could not be brought under Section 9 of the *Specific Relief Act*, and the Munsif, holding that the plaintiff was not ejected from the property in dispute altogether, and that his possession co-existed with that of the defendant, threw out the suit, subject, however, to our decision on the question—whether or not, under Section 9 of the Act above quoted, a suit would lie in the circumstances stated.

We are of opinion that a possessory suit lies under Section 9 as well when the plaintiff alleges his possession has been partially, as when he alleges it has been wholly, disturbed. He is dispossessed to the same extent as the alleged trespasser has obtained possession.

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\* Referred Case No. 7 of 1881.