

THE INDIAN LAW REPORTS, MADRAS SERIES, CONTAINING CASES DETERMINED BY THE HIGH COURT AT MADRAS AND BY THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL ON APPEAL FROM THAT COURT.

Madras, Vol. III—1878-81.

APPELLATE CIVIL.

The 23rd February, 1881.

PRESENT :

MR. JUSTICE INNES AND MR. JUSTICE KINDERSLEY.

Royal Reddi.....(Second Plaintiff) Appellant

versus

Linga Reddi.....(Defendant) Respondent.*

Civil Procedure Code, Sections 551, 574, 579.

The order of adjudication made under Section 551 of the Civil Procedure Code is a decree, and the procedure authorized under that section does not dispense with the necessity of drawing up a judgment.

In this case plaintiffs sue for a declaration of title to one moiety of certain land.

The Munsif, deciding against plaintiffs on the facts, dismissed the suit.

On appeal the District Judge recorded the following proceedings:—

“The Court after fixing the date for hearing, and hearing the Pleader of the appellants, resolves to confirm the decree of the Lower Court under Section 551† of the Code of Civil Procedure without sending notice of the appeal to the said Lower Court and without serving notice on the respondent.

“The Court further orders that this confirmation be notified to the said Lower Court.”

The plaintiff appealed on the ground that the judgment was defective and not in accordance with the provisions of the Code.

[2] *Anundacharlu and Sundaram Sastri* for the Appellant.

R. Balaji Rau for the Respondent.

*Second Appeal, No. 664 of 1880, against the decree of J. H. Nelson, District Judge of South Arcot, confirming the decree of the District Munsif of Cuddalore, dated 3rd July 1880.

†[Sec. 551:—The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.]

The Court (INNES and KINDERSLEY, JJ.) delivered the following

Judgment:—Referring to the decision in Second Appeal No. 559 of 1880,* we must require the District Judge to draw up a judgment in the way prescribed by Section 574† of the Civil Procedure Code. The procedure authorized under Section 551‡ does not dispense with the necessity of drawing up a judgment as is clear from Section 579, which requires that the decree shall follow the judgment as to date, and the order of adjudication under Section 551 is a decree within the definition in Section 2.

We must reverse the decree of the District Judge and remand the suit for adjudication according to law. The costs of this appeal will be provided for in the final decree.

NOTE.—Upon the receipt of the High Court's judgment in this case, the District Judge (Mr. Nelson), feeling in doubt as to what was to be done by him in the case, asked for directions, and the following order was made :—

“ The District Judge considers that the appeal before him was only provisionally admitted under Section 548§ for the purpose of being disposed of under Section 551 of the Civil Procedure Code, and, comparing the order passed by him therein with an order passed under Section 55 of the Code, holds that his order is not a decree.

“ The High Court is of opinion that the appeal was not *provisionally* admitted, but admitted, and what is heard under Section 551 is the appeal itself and not merely the appellant or his pleader. Section 2 of the Code expressly declares an order under Section 55|| to be a decree, and the final order under Section 551 is within the definition of a decree.

“ An Appellate Court dismissing an appeal under Section 551 ought, in the opinion of this Court, to record a judgment and pass a decree, the provision, which is novel, having been introduced in order to relieve respondents of the inconvenience of attending, and appellants of the costs of summoning them to attend, at the hearing of an appeal.

“ The proceedings of the District Judge having been quashed from the point at which he had heard the appellant or his vakil, he is now bound to take up the appeal again at that point, and if he cannot recollect the arguments which were adduced before him, he must hear the appellant again and proceed to comply with the instructions already conveyed to him in the judgment and decree of this Court in Second Appeal No. 664 of 1880.

“ Ordered accordingly.”

* Decree without written judgment held to be a grave error of procedure. Decree reversed.

Contents of judgment. †[Sec. 574 :—The judgment of the Appellate Court shall state—

(a) the points for determination ;

(b) the decision thereupon ;

(c) the reasons for the decision ; and

(d) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.]

Date and signature.

‡[Sec. 551 :—g. v. *supra* 3 Mad. 1.]

Registry of memorandum of appeal.

§[Sec. 548 :—When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.

Such book shall be called the Register of Appeals.]

Procedure on rejecting a plaint.

||[Sec. 55 :—When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.]

NOTES.

[EFFECT OF DISMISSAL OF APPEAL UNDER SEC. 551 OF C. P. C. (1882) OR UNDER O. 44, R. 11—

“ It amounts to a final determination of the appeal and the order made is a **decree** ”:— and “ it supersedes the decree of the Court below ”:—(1897) 24 Cal. 759 ; (1908) 30 All. 290.

As such

- (1) it cannot be amended except by the Court which dismissed it under the section :— (1897) 24 Cal. 759 ; (1908) 30 All. 290 ; (1907) 6 C. L. J. 542 ; (1898) 22 Mad. 293.
- (2) it cannot be reviewed except by the Court which dealt with it under Sec. 551 :— (1906) 4 C. L. J. 566.]

[3] APPELLATE CIVIL.

The 28th February, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., C.J., AND MR. JUSTICE KINDERSLEY.

Venkatanarasayya, by his Father and Guardian Lingarayadu.....Petitioner,
Achemma.....Counter-Petitioner.*

A minor may sue as a pauper by a next friend who is not a pauper.

The rule of English practice which prevents a minor from instituting a suit *in forma pauperis* through his next friend unless he gives proof not only that he is himself a pauper, but that the next friend, is a pauper, and that he cannot get any substantial person to act as his next friend, is not to be found in, or deduced from, the provisions of the Civil Procedure Code.

THIS was a petition under Section 622† of the Civil Procedure Code against the order of the District Judge of Kistna, rejecting the application of petitioner, a minor, for leave to sue as a pauper by his next friend, his natural father, to establish his adoption and recover the property of his late adoptive father from the counter-petitioner.

The application was rejected on the ground that the next friend was not a pauper.

A. Ramachandrayyar for Petitioner.

Ananda Charlu and Sundaram for Counter-Petitioner.

The Court (TURNER, C.J., and KINDERSLEY, J.) delivered the following

Judgment :—In England it appears to be the practice not to allow a minor to institute a suit through his next friend *in forma pauperis*, unless he gives proof not only that he is himself a pauper, but that the next friend is a pauper, and that he cannot get any substantial person to act as next friend—Daniell's Chancery Practice, 4th Edition, p. 39 : *Lindsey v. Tyrrell* (24 Beav. 124 : S. C. 2 DeG. and J. 7).

* C.M.P. 663 of 1880 against the order of D. Buick, Acting District Judge of Kistna, dated 20th October 1880.

† [Sec. 622 :—The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, and may pass such order in the case as the High Court thinks fit.]