

the trustees, as editor, and relying upon that appointment he claims that the defendants as trustees should carry out the direction in the instrument of trust and pay him his salary as therein provided until his resignation. If the plaintiff therefore has any cause of action it is to enforce the carrying out of one of the directions in the instrument of trust, *i.e.*, to enforce the performance of the trust in so far as it relates to the plaintiff. In this view the plaint should have been returned to be presented to the proper Court and it is accordingly now ordered to be returned. The revision petition is otherwise dismissed but without costs.

SUBRAMANIAM
 AYYAR
 &
 PANDI
 DORAISAMI
 TAVER.

APPELLATE CIVIL.

Before Mr. Justice Bhashyam Ayyangar and Mr. Justice Moore.

MAILTHI (FIRST PLAINTIFF), PETITIONER,

v.

SOMAPPA BANTA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1902.
 August 18.

Code of Civil Procedure—Act XIV of 1882, ss. 404, 592—Presentation of application for leave to appeal in formâ pauperis—Necessity for personal application—Application of Rules in Chapter XXVI after presentation of application.

The provision in section 404 of the Code of Civil Procedure, which requires an application for permission to sue *in formâ pauperis* to be presented (except in certain circumstances) by the applicant in person, does not apply to an application under section 592 to be allowed to appeal as a pauper.

After an application has been presented under section 592, all action taken subsequent to such presentation is, by the terms of section 592, to be subject to the rules contained in chapter XXVI of the Code, but the presentation of the application itself is not subject to those rules.

In re Narisi, (I.L.R., 8 Mad., 504), not followed.

APPLICATION to be allowed to appeal *in formâ pauperis*. On 29th March 1901, the District Munsif of Puttur passed a decree against the applicant. On 26th June 1901, the applicant presented an application through a vakil, asking to be allowed, under section

* Civil Revision Petition No. 5 of 1902, presented under section 622 of the Code of Civil Procedure, praying the High Court to revise the order of J. W. F. Dumergue, District Judge of South Canara, dated 15th July 1901, on Miscellaneous Petition No. 155 of 1901 (Original Suit No. 187 of 1900 on the file of the District Munsif's Court of Puttur).

MALETHI
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592 of the Code of Civil Procedure, to appeal *in formâ pauperis*. The District Munsif passed the following order :—“ This should be presented in person or by one specially authorized to do so.” The applicant re-presented the application in person on 18th August 1901, but the District Munsif then held that it was out of time. The applicant then appealed to the District Judge, who rejected the petition on the same ground, adding that there was no discretion in the case of a pauper appeal.

The applicant preferred this civil revision petition.

K. Narayana Rau for petitioner.

K. P. Madhava Rau for respondent.

JUDGMENT.—We are of opinion that this application under section 592 of the Civil Procedure Code was in time. The decree of the District Munsif was passed on 29th March 1901, and the application praying for permission to appeal *in formâ pauperis* was put in on the 26th June. As, however, this application was presented by a vakil and not in person or by a duly authorized agent (section 404, Civil Procedure Code), the application was returned. It was presented in person on the 11th July and was then held to be out of time. We do not consider that the provision in section 404, Civil Procedure Code, requiring an application for leave to sue as a pauper to be presented in person, or in certain circumstances by a duly authorized agent, applies to an application under section 592, Civil Procedure Code, for leave to appeal as a pauper. With all deference to the learned Judge we are unable to follow the ruling of a single Judge in *In re Narisi*(1) and the reasoning on which it is based. Section 592 provides that any person entitled to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application, be allowed to appeal as a pauper, subject to the rules in chapter XXVI, etc. The proper grammatical construction to be placed on this section is, in our opinion, that a person entitled to appeal, having presented an application to be allowed to appeal as a pauper, all action taken subsequent to the presentation of that application is to be subject to the rules contained in chapter XXVI, but not that the presentation of the application itself is subject to such rules. In the view that we take of the present application it should not have been returned as not complying with the terms of section 404, Civil Procedure

(1) I.L.R., 8 Mad., 504.

Code, and was therefore in time. We set aside the order of the District Judge and direct him to retake the application to him on the file and dispose of it according to law. Costs of this petition will be costs in the cause.

NAILTHI
SOMAPPA
BANTA.

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Benson.

SIVANTHA NAICKEN AND OTHERS (COUNTER-CLAIMANTS Nos. 1 TO 4
AND 6 TO 18), APPELLANTS,

1902.
August 4, 5.

v.

NATTU RANGA CHARI AND ANOTHER (CLAIMANTS),
RESPONDENTS.*

Land Acquisition Act—I of 1894, s. 30—Lands waste from time immemorial taken up—Compensation awarded—Amount claimed by Mirasidars and Shrotriendars—Persons entitled.

Certain lands which had been waste from time immemorial were taken up by Government, and compensation was awarded. Claims were made by the Mirasidars for the amount so awarded. The rights of the Government in the lands had been alienated by Government to certain Shrotriendars, who also claimed to be entitled to the amount awarded as compensation :

Held, that the Shrotriendars were entitled.

CLAIM, under section 30 of Act I of 1894, to money awarded as compensation. The District Judge passed the following order :—

“This is a reference from the Sub-Collector, under section 30, Act I of 1894. There is no dispute about the amount of compensation awarded. The dispute is between the Shrotriendars of Vellachi village, wherein the land is situated, and certain persons, styling themselves ‘Mirasidars’ of the village, as to who is entitled to the amount of compensation awarded. The land is immemorial waste or jungle land, and the compensation amount represents rent for the occupation of the land for five years as an artillery range, and the value of trees removed from it, together with interest. The land being admittedly immemorial waste, I think that the

* Appeals Nos. 212 of 1900 and 12 of 1901 presented against the orders of A. C. Tate, District Judge of Chingleput, in Compensation References Nos. 1 and 2 of 1900.