proviso in question does not apply. We do not in this case wish to lay down any general rule as regards the meaning of the word "proved" occurring in the other sections of the Act. The appeal fails and is dismissed, but we make no order as to costs, as the respondent has taken the point now raised for the first time in appeal.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.

PERAM CHENNAMMA (PLAINTIFF—PETITIONER), APPELLANT.*

1929, October, 8.

Civil Procedure Code (Act V of 1908), O. XLIV, r. 1—Leave to appeal in forma pauperis*—Question to be considered by Court before granting leave to appeal—*Prima facie *good case, if exists—Court not to strive to arrive at a definite and final conclusion, if decree is erroneous or unjust.*

Order XLIV, rule 1, of the Civil Procedure Code does not contemplate that, before granting leave to appeal in *forma pauperis*, the Court should arrive at a definite and final conclusion that the decree complained against is contrary to law or otherwise erroneous or unjust; it is enough if the applicant shows that he has *prima facie* a good case, and if he does so, leave to appeal should be granted.

APPEAL under clause 15 of the Letters Patent against the order of PAKENHAM WALSH, J., in C.M.P. No. 3262 of 1929 on the file of the High Court (application for leave to appeal in *forma pauperis* against the decree of the Court of the Subordinate Judge of Guntūr in O.S. No. 72 of 1927).

The material facts appear from the judgment.

Ch. Raghava Rao for appellant.

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* Letters Patent Appeal No. 92 of 1929.

CHENNAMMA, *In re.*

VENKATASUBBA RAO, J.

The JUDGMENT of Court was delivered by

VENKATASUBBA RAO, J.—The plaintiff applied to the High Court to be allowed to appeal in *forma pauperis*. The application was rejected by a Judge of this Court, and the plaintiff files this Letters Patent Appeal.

Order XLIV, rule 1, says that the Court shall reject the application unless, upon a perusal thereof and of the judgment, it sees reason to think that the decree is contrary to law or some usage having the force of law, or is otherwise erroneous or unjust. The learned Judge who heard the application rejected it, quoting the words of this section and merely observing that its requirement had not been fulfilled. The lower Court dismissed the plaintiff's suit holding that the claim was barred under article 93 of the Limitation Act. The question to be decided is, what is the article applicable to such claims, article 93, as that Court has held, or article 144 or 142, as the appellant contends?

The lower Court discusses the question at great length and refers to various authorities. It says that *Narayanan Chetti* v. *Kannammai Achi*(1) supports the plaintiff's contention, but expresses the view that it must be taken to have been impliedly overruled as a result of certain later cases. The matter thus requires further investigation. In other words, the appeal raises a substantial question of law and we cannot foretell what view the Bench disposing of the appeal may take after hearing arguments on both sides. To decide the point at once would be to prejudge the appeal. It is unreasonable to hold that Order XLIV, rule 1, compels us to adopt such a course. This is the view that has generally been taken by this Court. In L.P.A. No. 248 of 1927, KUMARASWAMI SASTRI and WALLACE, JJ., were called on

(1) (1904) I.. LR., 28 Mad., 338.

to interfere with an order made by a single Judge refusing leave. They reversed the order observing that the appeal raised a substantial question of law. The same question was again raised in L.P.A. No. 351 of 1926 to which one of us was a party. The Judge before whom the application was made having rejected it, a Letters Patent Appeal was filed against his order. The Bench which heard the appeal reversed the order, stating that the appellant had *prima facie* a good case. A similar view was taken in *Merwa Parasuramudu* v. *Manavilli Ramamma*(1). It is unnecessary in our opinion that the Court should arrive at a definite and final conclusion that the decree complained against is contrary to law or is otherwise erroneous or unjust. That certainly cannot be the intention of Order XLIV, rule 1. We therefore set aside the order and allow the Letters Patent Appeal.

We may add that, in conformity with precedents, we have not directed notice to the respondents before deciding this Letters Patent Appeal (see the two Letters Patent Appeals quoted above, Nos. 351 of 1926 and 248 of 1927).

The appellant was allowed to sue *in forma pauperis*, and no further inquiry seems necessary.

We understand that the application was made in time. We direct that the appeal may be admitted.

K.R.

(1) (1925) 22 L.W., 23.