APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and
Mr. Justice Venkataramana Rao.

1936, October 23.

KOTI VISWANATHAM (PETITIONER), APPELLANT,

v.

PANDIRI SATYANANDAM AND SIX OTHERS (RESPONDENTS 1 TO 4, 6, 8 AND 9), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXXIII, r. 5—Agreement referred to in—Champertous agreement necessarily, if—Agreement made with reference to or in view of intended suit or appeal, if—O. XLIV, r. 1.

The agreement referred to in rule 5 of Order XXXIII of the Code of Civil Procedure, the provisions of which order are applicable by virtue of Order XLIV, rule 1, of the Code to appeals also, need not necessarily be one of a champertous character. It is also not necessary that the agreement should be one made with reference to or in view of the intended suit.

The principle underlying the provision (Order XXXIII, rule 5) is that a person ought not to be allowed to sue in *forma pauperis* after transferring to a third party his interest in the property involved in the suit, no matter for what reason the transfer has been made.

Bai Chandaba v. *Kuver Saheb Bapu Saheb*, (1893) I.L.R. 18 Bom. 464, *Mansa Puri* v. *Harbhagat Puri*, (1916) 37 I.C. 172, and *Abdul Jabbar* v. *Sanu Bibi*, A.I.R. 1934 Cal. 740, dissented from.

Hanifa Bai v. *Haji Siddick Bui Meanji Sait*, (1906) I.L.R. 30 Mad. 547, referred to.

APPEAL under Clause 15 of the Letters Patent against the order of BURN J. dated 3rd February 1936 and made in Civil Miscellaneous Petition No. 4696 of 1934—petition presented to the High Court for leave to appeal in *forma pauperis* against the decree of the Court of the Subordinate

* Letters Patent Appeal No. 20 of 1936.

Judge of Rajahmundry in Original Suit No. 62 of 1926.

M. S. Ramachandra Rao for appellant.

G. Lakshmanna for respondents.

The JUDGMENT of the Court was delivered by VENKATASUBBA RAO J.—This is a Letters Patent Appeal from the order of BURN J. refusing leave to the appellant to file his appeal in *forma pauperis*. The facts, so far as they are relevant, may be shortly stated. The suit related to certain logs of timber, which the plaintiff claimed by virtue of an agreement with the first set of defendants. The fifth defendant was the rival claimant, who alleged that the logs belonged to him and had been transferred to the sixth defendant. The lower Court negatived the claim of the fifth and sixth defendants and decreed the plaintiff's suit. The applicant before BURN J. was the fifth defendant, who applied for leave to file the appeal in *forma pauperis*. Pending the action, the logs were sold and the sale proceeds were brought into Court and the fifth defendant, reciting that some monies were due from him to the sixth, transferred to him such interest as he possessed in the proceeds. The point to note is, that the transfer was not made with reference to any intended appeal, having been effected, as stated above, even before the judgment was delivered by the Court below.

The provision of law which governs the question is Order XXXIII, rule 5, Civil Procedure Code (the provisions of Order XXXIII being applicable by virtue of Order XLIV, rule 1, to appeals also) which runs thus :

"The Court shall reject an application for permission to sue as a pauper— . . .

VIWSANATHAM v. SATYANANDAM. — VENKATASUBBA RAO J.

(*e*) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter."

It is contended for the appellant that the agreement referred to here must be of a champertous character, the idea being that the provision is aimed against bargains tending to promote litigation, such bargains being immoral in a legal sense. First, it must be pointed out that the English law in regard to champerty and maintenance does not apply in India, for it has been laid down that an agreement being champertous is not of itself sufficient to render it void, but must be shown, in addition, to be contrary to public policy. Further, it is to prevent payment of court-fee being evaded that this provision has been enacted, and it matters little therefore with what purpose the agreement has been entered into—whether it is an honest or *bona fide* one or of an improper character seems an irrelevant factor, quite outside the scope of the enquiry. There is no need to read into the section the suggested limitation, which does not find a place there. The principle underlying the provision is that a person ought not to be allowed to sue in *forma pauperis* after transferring to a third party his interest in the property involved in the suit, no matter for what reason the transfer has been made. In other words, as was observed in *Hanifa Bai* v. *Haji Siddick Bui Meanji Sait*(1) (where, however, this point was not raised or considered), the question would be, whether, at the date of the institution of the suit, there was a subsisting agreement falling within the provision.

(1) (1906) I.L.R. 30 Mad. 547.

In one case in Bombay, one in Allahabad and one in Calcutta, a different view has been taken without much discussion [*Bai Chandaba* v. *Kuver Saheb Bapu Saheb*(1), *Mansa Puri* v. *Harbhagat Puri*(2) and *Abdul Jabbar* v. *Sanu Bibi*(3)], but with great respect we are unable to agree with these decisions.

It is next contended that the agreement here does not offend against the provision, as it was not made in view of the intended appeal. The argument is, that from the use of the word "proposed" it should be inferred that what the section refers to, is an agreement the party enters into having the suit in contemplation. That does not appear to be the natural meaning of the words. Is there an agreement or not referring to the subject-matter of the proposed suit?—that is the only question, and there is no warrant for assuming that the agreement should be one made with reference to or in view of the intended suit. Rule 9, which relates to the dispaupering of the plaintiff, throws some light on the question. Under that rule, for a plaintiff being dispaupered, all that need be shown is that he has entered into an agreement of the character described with reference to the subject-matter of the suit, and it is noticeable that the word "proposed" does not occur there. It is difficult to believe that rule 5 embodies a different principle from rule 9, the object of both the rules being to produce the same result. In the Allahabad case mentioned above, *Mansa Puri* v. *Harbhagat Puri*(2), the learned Judges adopted the construction of the

(1) (1893) I.L.R. 18 Bom. 464. (2) (1916) 37 I.C. 172.
(3) A.I.R. 1934 Cal. 740.

VISWANATHAM v. SATYANANDAM. — VENKATASUBBA RAO J.

word "proposed" now contended for; they seem to have arrived at the result by holding that if the agreement was to be champertous, it would necessarily be with reference to the suit in contemplation. As already stated, we are unable to agree with this view.

Leave to appeal in *forma pauperis* has therefore been rightly refused.

The question then remains, whether the learned Judge's order refusing to give the appellant time to pay the requisite court-fee can be upheld. That the Court has power under section 149, Civil Procedure Code, to grant such time, cannot be disputed. We have carefully gone through the facts and it has not been shown that there was want of *bona fides* on the part of the appellant; nor can it be suggested that the party who ought to have filed the appeal was the sixth defendant, the transferee, and not the fifth. The parties might reasonably have thought that the findings against the sixth defendant could not be successfully attacked in appeal, but that, so far as the fifth defendant was concerned, the point he could urge was altogether different. We are therefore of the opinion that the appellant ought to have been given time for payment of the court-fee; four days' time is accordingly granted from this date.

Mr. Lakshmanna for the respondents suggests that our order may work hardship upon him unless one of two courses is adopted, either the sixth defendant should be brought on the record as appellant, or the respondent should be allowed to apply for security for costs. Mr. M. S. Ramachandra Rao for the appellant believes that the

sixth defendant may be willing to come on the record as an appellant. If such an application is made, it will be allowed ; if not, Mr. Lakshmanna will be at liberty to apply for security for costs. When applications are made in this behalf, they shall be posted before this Bench.

We direct the appellant to pay Rs. 103 (the costs awarded by the order under appeal) to Mr. Lakshmanna in one month from this date. If default is made, it will be treated as equivalent to failure to comply with an order for security for costs and the respondent will be at liberty to take appropriate steps.

We make no order as to costs in this appeal.

A.S.V

APPELLATE CIVIL.

Before Mr. Justice Madhavan Nair and Mr. Justice Stodart.

SENDATTIKALAI PANDIA CHINNATHAMBIAR (DECEASED) AND ANOTHER (PLAINTIFF AND NIL), APPELLANTS,

1936, October 2.

v.

SANGILI VEERAPPA PANDIAN *alias* THANGASWAMI AND OTHERS (DEFENDANTS), RESPONDENTS.*

Transfer of Property Act (IV of 1882), sec. 36—Apportionment —Impartible estate—Rent payable by occupancy tenants of —Rent accrued during lifetime of holder of estate but realised after her death—Apportionable between heirs of that holder, if—Principle of sec. 36—Applicability of.

The Rani of Sivagiri estate died on 23rd November 1916 about five months after the commencement of fasli 1326 and was succeeded by the plaintiff who was accordingly entitled

* Appeal No. 485 of 1930.