

resources if at all, but is not one which can justify a permanent alienation of part of the landed estate which belonged to her husband.

The plaintiff will have a decree declaring that the gift to the defendant is invalid so far as it affects plaintiff's reversionary right as next heir. The appeal is decreed with costs.

Appeal allowed.

FULL BENCH.

Before Mr. Justice Turner, Officiating Chief Justice, Mr Justice Fearson, and Mr. Justice Oldfield.

COLLIS (PLAINTIFF) v. MANOHAR DAS (DEFENDANT).*

Application for leave to sue as a Pauper—Appeal—Act X of 1877 (Civil Procedure Code), ss. 2, 54, 407, 314, 450, 588—Act VIII of 1859 (Civil Procedure Code), s. 311.

No appeal lies under Act X of 1877 from an order made under that Act rejecting an application for permission to sue as a pauper.

ONE Edwin Collis applied to the Judge of the Small Cause Court at Allahabad, exercising the powers of a Subordinate Judge, for permission to bring a suit as a pauper. The Judge, under s. 407 of Act X of 1877, rejected the application on the ground that the petitioner was possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit.

The petitioner preferred an appeal to the High Court against the Judge's order rejecting his application.

The Court (Turner, O.C.J.), on the 12th June, 1878, ordered the petition of appeal to be laid before a Division Bench of the Court. The Division Bench (Turner, O.C.J., and Pearson, J.), on the 14th June, 1878, admitted the appeal in order that the question whether an appeal would lie or not might be argued. This question was argued before the Division Bench, which directed that the case should be laid before the Full Bench.

The petitioner appeared in person and contended that the order of the Small Cause Court Judge was a "decree" within the meaning

1878

RUDE
NARAIN
SINGH
v.
RUP KUMAR

1878
July 18.

* Miscellaneous Application, No. 15 B, against an order of G. F. Knox, Esq., Judge of the Small Cause Court, Allahabad, dated the 30th April, 1878.

1878
 COLLIE
 v.
 MANOHAR
 DAS.

of s. 2 of Act X of 1877, and that it was consequently appealable under s. 540 of that Act. He referred to *Thakur Prasad v. Ahsan Ali* (1).

The *Junior Government Pleader* (Babu *Dwarkanath Banarji*), for the opposite party, contended that the order was not appealable under Act X of 1877.

The following judgments were delivered by the Full Bench:

PEARSON, J.—This is an appeal from an order passed under s. 407 of Act X of 1877 rejecting an application for permission to sue as a pauper. Such an order was not subject to appeal under the old Code of Procedure (s. 311 of Act VIII of 1859). The question is whether it is appealable under the new Code of Procedure, Act X of 1877. No provision for an appeal from such an order is made in s. 588 of the Act. The appellant contends that it is appealable as a decree under s. 540, in reference to the terms of the second section, in which a decree is defined as the formal order of the Court in which the result of the decision of the suit or other judicial proceeding is embodied.

The order in question certainly does not embody the result of the decision of the suit, which it refuses to entertain in the manner in which it is sought to be instituted without payment of the fee payable by law on the plaint.*

It can hardly be denied that the order embodies the result of a judicial proceeding. But so also do the orders specified in s. 588 embody the result of a judicial proceeding, yet it cannot be presumed that those orders were regarded as decrees appealable under s. 540 by the Legislature, for had they been so regarded it would have been unnecessary to declare in s. 588 that an appeal shall lie from them. It seems to follow that the judicial proceedings referred to in s. 2 are proceedings of a different nature from those which result in the orders specified in s. 588, and that they in some degree resemble and partake of the character of a suit.

The category given in s. 588 includes all important orders passed in the course of the trial of a suit and the execution of a

(1) *Thakur Prasad v. Ahsan Ali*, ante p. 668.

1878

 COLLIS
 V.
 MANOHAR
 DAS.

decree, except the most important of all, namely, orders finally disposing of applications for the execution of decree. As it is impossible to suppose that an appeal would be allowed from orders of secondary importance, and not from orders of the first importance, it may reasonably be concluded that orders finally disposing of applications for the execution of decrees were intended to be appealable as decrees under s. 540. A recent judgment of the Full Bench of this Court (1) has settled that they are so appealable.

Proceedings in execution of decree necessarily follow what is called the decision of the suit in s. 2. They may, indeed, be still a part of the suit, if that be held not to terminate with the decree, but with the execution of the decree. Nevertheless each application for execution may be viewed as a little suit of itself, though it be a suit within a suit; and the proceedings in each are not unlike those in the trial of the suit. That proceedings under s. 244 were so viewed by the Legislature is indicated by the provision made in s. 588, cl. (j), for appeals from orders passed in the course of them of the same nature with appealable orders made in the course of a suit.

An application for permission to sue "as a pauper is really the presentation of a plaint. The order passed upon it does not so much resemble an order determining matters in issue between parties relating to the execution of a decree as an order passed under s. 54, cl. (b), rejecting a plaint written on paper insufficiently stamped. That order is not a decree appealable under s. 540, but is appealable under s. 588, cl. (e). From an order rejecting an application under s. 407 it was presumably deemed unnecessary to allow an appeal in reference to the provisions of s. 413. The present appeal should therefore in my opinion be rejected.

TURNER, O. C. J.—I concur in the judgment pronounced by Mr. Justice Pearson.

OLDFIELD, J.—I concur in the judgment of Mr. Justice Pearson.

Appeal rejected.

(1) *Thakur Prasad v. Ahsan Ali*, ante, p. 666.