

compensation for the occupation of their land. This case came before us as an application in revision from the judgment of a Civil Court dismissing the suit. We dismiss this application.

Application dismissed.

1898

DEBI
SINGH.v.
MUHAMMAD
ISMAIL
KHAN.

1898

February 4.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.

KAMRAKH NATH (APPLICANT) v. SUNDAR NATH (OPPOSITE PARTY)*

Civil Procedure Code, sections 406, 407—Application for leave to sue in forma pauperis—Applicant to make out that he has a good subsisting cause of action.

Clause (c) of section 407 of the Code of Civil Procedure does not refer solely to a question of jurisdiction, but the applicant must make out that he has a good subsisting *prima facie* cause of action capable of enforcement in Court and calling for an answer. *Chattarpal Singh v. Raja Ram* (1), *Dulari v. Vallabdas Pragji* (2), and *Vijendra Tirtha Swami v. Sudhindra Tirtha Swami* (3) referred to. *Koka Ranganayaka Annal v. Koka Venkatachellapati Nayudu* (4) dissented from. *Venkubai v. Lakshman Venkoba Khot* (5) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. S. S. Singh and Pandit Madan Mohan Malaviya, for the applicant.

Munshi Ram Prasad and Pandit Sunder Lal, for the opposite party.

EDGE, C. J. and BURKITT, J.—This is an application asking the Court to revise, under section 622 of the Code of Civil Procedure, an order of the Subordinate Judge of Gorakhpur rejecting an application for leave to sue as a pauper. The applicant alleged that he was the eldest chela of the deceased mahant; that whilst he was on a pilgrimage the mahant died and the proposed defendant to the suit had wrongfully usurped the gaddi and the position of mahant of the temple, and the applicant alleged that he was entitled to the gaddi by law and custom.

* Civil Revision No. 27 of 1897.

(1) I. L. R., 7 All., 661.

(3) I. L. R., 19 Mad., 197.

(2) I. L. R., 18 Bom., 126.

(4) I. L. R., 4 Mad., 323.

(5) I. L. R., 12 Bom., 617.

1898

KAMRAKH
NATH
v.
SUNDAR
NATH.

We may observe here that that was a very loose allegation. In nearly all these cases of succession to the gaddis of temples the succession is governed by the custom of the class to which the temple is appropriated. Sometimes the mahant nominates his successor, and that successor on the death of the mahant becomes entitled by virtue of the nomination. In other cases the successor is appointed by the representative of the founder of the temple. In others again the successor is appointed by the mahants of the neighbouring temples, but the instances we have given are not exhaustive of the customs which have been found to apply in such cases. Consequently the mere allegation that a claimant is entitled by law and custom to the gaddi of a temple is not in our opinion a sufficient allegation of title. Something more than general allegations are requisite in the plaint where a claim is made to the possession of property which is in the possession of another person, always of course provided that the case is not one falling under section 9 of the Specific Relief Act. The case of *Philipps v. Philipps* (1) and that of *Dawkins v. Lord Penrhyn* (2) are instructive as to the law on this subject in England.

The Subordinate Judge examined, under section 406 of the Code of Civil Procedure, the applicant regarding the merits of his claim. The fact that he was a pauper was not disputed. It appeared from the examination that, according to one custom at least affecting the particular temple, a jar with water in it was placed on the gaddi in the event of the mahant dying during the absence of the person entitled to succeed him on the gaddi. This is not alleged to have been done in the present case, and it also appeared that the defendant had taken possession of the gaddi without any serious opposition on the part of the panches of the temple. On these facts the Subordinate Judge came to the conclusion that the applicant had not shown a *prima facie* reasonable cause of action, and rejected the application for leave to sue as a pauper.

(1) L. R., 4 Q. B. D., 127.

(2) L. R., 4 App. Cas., 58.

It has been contended that this case comes within the ruling of the Bombay High Court in *Venkubai v. Lakshman Venkoba Khot* (1). It appears to us that that case does not apply here. Here the Judge addressed himself to the question of whether or not the applicant had shown grounds from which it might be inferred that he had a probable cause of action. It is obvious that the mere statements in the plaint which accompanies an application for leave to sue as a pauper cannot be accepted as the sole materials on which a decision as to whether the applicant's allegations do or do not show a right to sue can depend. If the allegations in the plaint were the sole matters to be looked to and the applicant were admittedly a pauper, the granting of this application to sue as a pauper would depend, not on whether he had any merits to go upon, but on the skill of the gentleman who drafted his petition and his plaint, and the examination as to the merits under section 406 would be superfluous.

It has been held by this Court in *Chattarpal Singh v. Raja Ram* (2) that clause (c) of section 407 of the Code of Civil Procedure does not refer solely to a question of jurisdiction, but that the applicant must make out that he has a good, subsisting *prima facie* cause of action capable of enforcement in Court and calling for an answer. That Full Bench ruling was cited with approval by Jardine J., in *Dulari v. Vallabdas Praggi* (3), and even if the Madras Court in *Koka Ranganayaka Ammal v. Koka Venkatachellapati Nayudu* (4) took a different view, we are bound to follow the Full Bench ruling of our own Court. We may say that we entirely approve of that Full Bench ruling. Further, the Madras Court in *Vijendra Tirtha Swami v. Sudhindra Tirtha Swami* (5) did not follow the case in I. L. R., 4 Mad., 323. Assuming the Full Bench ruling to be correct, as we do, it was within the jurisdiction of the Subordinate Judge to decide whether or not the applicant's allegations showed a right to sue. It has been held by their

(1) I. L. R., 12 Bom., 617.

(3) I. L. R., 13 Bom., 126.

(2) I. L. R., 7 All., 661.

(4) I. L. R., 4 Mad., 323.

(5) I. L. R., 19 Mad., 197.

1896

 KAMRATH
 NATH
 v.
 SUNDAR
 NATH.

1898

KAMRAKH
NATH
v.
SUNDAR
NATH.

Lordships of the Privy Council in *Rajah Amir Hassan Khan v. Sheo Bakhsh Singh* (1) that where a Court has jurisdiction to decide a question, and does decide it, the High Court cannot under section 622 of the Code of Civil Procedure interfere merely because the Court has wrongly decided the question. There is no question in this case of illegality or material irregularity. The result is that the Subordinate Judge had jurisdiction to decide this question and did decide it. He was not guilty of any illegality or irregularity, and it is unnecessary to consider whether he decided the question rightly or wrongly. We cannot interfere. We dismiss this application with costs.

Application dismissed.

APPELLATE CIVIL.

1898

February 7.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Banerji.

CHUNNI LAL (JUDGMENT-DEBTOR) v. HARNAM DAS (DECREE-HOLDER).*

Execution of decree—Act No. IV of 1882 (Transfer of Property Act), section 89—Order absolute for sale—Limitation—Act No. XV of 1877 (Indian Limitation Act) Schedule ii Article 179.

An application for an order absolute for sale under section 89 of the Transfer of Property Act, 1882, is an application to which article 179 of the second schedule to the Indian Limitation Act, 1877, applies. *Oudh Behari Lal v. Nageshar Lal* (2) referred to. *Ranbir Singh v. Drigpal Singh* (3) overruled.

THIS appeal arose out of an application for an order absolute for sale under section 89 of the Transfer of Property Act, 1882. The respondent obtained a decree for sale under section 88 of the Transfer of Property Act on the 30th of March 1893 against the appellant. By the decree six months were allowed for payment of the decretal sum. That period expired on the 30th of September 1893. On the 10th of March 1897, the respondent decreeholder applied for an order for sale under section 89 of the

* First Appeal No. 82 of 1897, from an order of Babu Baijnath, Subordinate Judge of Sháhjahánpur, dated the 17th June 1897.

(1) L. R., 11 I. A., 237. (2) I. L. R., 13 All., 278.

(3) I. L. R., 16 All., 23.