

creditor for the lesser debt was compelled to come to the higher and more expensive tribunal (compare s. 28 of Act IX of 1850 and s. 2 of Act XXVI of 1864). For, amongst other purposes, that of remedying this hardship the new Act was passed; yet Mr. *Millett's* rule entirely negatives this remedial effect of the new Act.

I do not think that in this case Mr. *Millett* has exercised any discretion at all. He has simply applied to this case the rule that I have referred to, and has not considered the circumstances of this case.

I must set aside his order refusing leave to sue.

Under the circumstances I think it better that I should also, under the powers given to me by s. 622 of the Civil Procedure Code, give leave to sue in the Small Cause Court. I accordingly give such leave.

T. A. P.

Order reversed.

Before Mr. Justice Trevelyan.

KHAJAH ASSENOOLLAJOO v. SOLOMON AND ANOTHER.*

Security for Costs—Poverty—Speculative Suit.

The mere fact that a plaintiff is a poor man, and has parted with a portion of his interest in the subject-matter of the suit for the purpose of obtaining funds to carry on the suit, is no sufficient ground to ask that security for the costs of the suit may be required of him; it is otherwise where he is not the real litigant, but a mere puppet in the hands of others.

THIS was an application on notice made on behalf of Bibee Solomon for an order that the plaintiff be directed to give security for the payment of all costs incurred and to be incurred in the suit of *Khajah Assenoollajoo v. Bibee Solomon*, and that all proceedings should be stayed until such security be given.

The affidavit supporting the application alleged (a) that the plaintiff was a permanent resident of Cashmere, and was merely a temporary resident in Calcutta for the purpose of bringing this suit; (b) that the plaintiff did not carry on any business in British India nor was he possessed of any property, moveable or immoveable, in British India; (c) that the suit was a speculative one carried on for the benefit, amongst others, of Rohim Bux, Aga Hossein Ally, Aga Ekram Ally and Gobind

* Original Civil Suit No. 107 of 1886.

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Chunder Doss ; that the plaintiff had in 1882 assigned over to Abdoor Rohim a moiety of all his claim in the said suit and of all property that he might recover under the decree in the said suit in consideration of being advanced funds for the purpose of carrying on the said suit ; that on the failure in business of the said Abdoor Rohim the plaintiff had on 11th December, 1883, entered into a fresh agreement of a similar nature with Aga Hossein Ally, Aga Ekram Ally and Gobind Chunder Doss, and that monies had been advanced to the plaintiff under this agreement ; that the plaintiff had on the 21st of April, 1884, executed a mortgage in favor of the persons last mentioned in pursuance of the agreement of the 11th December, 1883 ; that at the present time there were several decrees out against the plaintiff remaining unsatisfied.

In reply the plaintiff alleged that he had been a permanent resident in Calcutta since 1880 and was still residing there ; that he carried on business in shawls in Calcutta, and was possessed of certain household furniture and stock-in-trade in his residence at Calcutta in addition to certain property, moveable and immoveable, to which he was entitled under a decree of the 27th August, 1883. He admitted the agreement with Abdoor Rohim, and that he had received from him Rs. 1,700 but alleged that he had repaid to him Rs. 1,000 out of such sum ; further admitting the second agreement of the 11th December, 1883, and the mortgage of 21st April, 1884, and a further assignment of a one-anna share to one Petumber Chowdhuri, but alleged that he still has a seven-anna interest in the estate the subject of the suit, and denied that the suit was a speculative one.

Mr. *Bonnerjee* and Mr. *O'Kinealy* in support of the application cited *Ram Coomar Coondoo v. Chunder Cantoo Mookerjee* (1) as showing that when a plaintiff sues for another person security should be taken.

Mr. *Hill* and Mr. *Amir Ali*, contra, cited *Morgan v. Evans* (2) ; *Wray v. Brown* (3) ; *Parker v. G. W. Ry. Co.* (4) ; *Armitage v. Grafton* (5) ; *Worrall v. White* (6).

(1) I. L. R., 2 Calc., 233.

(4) 9 C. B., 766.

(2) 7 Moore's P. C., 344.

(5) 10 Jur., 377.

(3) 8 Scott, 557.

(6) 3 Jo. & Lat., 513.

TREVELYAN, J.—In this application the defendant seeks to compel the plaintiff to give security for the costs of this suit.

The first ground is that he does not reside in British India.

Although he is a native of Cashmere, he seems to have been for some time resident in British India, and it does not appear that he has been out of British India for a long time. This ground, I think, clearly fails.

The other ground is that he has disposed of a portion of his interest in the suit, that he is a pauper, and that the suit is a speculative one brought at the instance of and for the benefit of others.

There are a good many matters alleged which go to the merits of the suit, and to which I need not refer in dealing with this application.

In the 43rd paragraph of his affidavit Mahomed Gouse states that in the year 1882 the plaintiff entered into an agreement with one Abdoor Rohim and others for the purpose of obtaining from them advances from time to time in order to carry on a suit referred to in that affidavit, and to meet his personal expenses during the pendency of the said suit and as remuneration for such advances he assigned over to Abdoor Rohim and others a moiety of all his claims in such suit, and of all property that he might recover under the decree in that suit. The plaintiff admits this agreement, and states that he owes Rs. 700 under it.

It is then alleged that on the 11th of December, 1883, the plaintiff entered into a fresh agreement of a similar nature with Aga Hossein Ali, Aga Ekram Ali, and Gobind Chunder Doss, and that on the 21st of April, 1884, a mortgage was executed in favor of those persons.

The plaintiff admits this agreement and mortgage, but points out that he has still got a seven-anna interest in the estate, the subject-matter of this suit.

The 46th paragraph of Mahomed Gouse's affidavit contains an allegation which is denied and is unsupported. I do not think I can act upon it.

The 47th paragraph states that the plaintiff's landlord had to institute against him three suits for small sums of rent.

The plaintiff states that he has satisfied these decrees, but

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he does not state when he satisfied them. As he satisfied another suit for rent, which is referred to in the 48th paragraph of Mahomed Gouse's affidavit, after notice of this application had been given, in all probability he satisfied the three decrees also after notice had been given.

It appears from the affidavit of Mahomed Gouse that the defendant has been unable to realise from the plaintiff the costs of an interlocutory application which he was directed to pay.

There is no doubt, I think, that the plaintiff is a poor man, probably without any means at all, and that he is being assisted by others in obtaining funds for the purpose of carrying on this litigation, and that he has parted with a portion of his interest. I do not think that the case goes further than this. Mr. Bonnerjee for the defendant relied on some observations made by the learned Judge who delivered the judgment of the Privy Council in the well-known case of *Ram Coomar Koondoo v. Chunder Canto Mookerjee*. There Sir Montague Smith says (I. L. R., 2 Calc., 259) :—

“ It is the ordinary practice, if the plaintiff is suing for another, to require security for costs, and to stay proceedings until it is given. The now plaintiffs were fully aware, during the pendency of the former suit, of the arrangement between the McQueens and the defendant, but instead of applying for security for costs, they petitioned the Court to make him a co-plaintiff under s. 73 of Act VIII.” And later on in the judgment he says: “ It has been a misfortune to the plaintiffs that security was not obtained for the costs in the course of the former suit.”

These observations were not necessary for the purpose of the decision, but I take it that there can be no doubt, apart from that decision, that this Court has power to require security for costs, if it finds that the plaintiff is not the real litigant, but that he is only a puppet in the hands of others. Sir Montague Smith did not, as I understand him, intend to apply to this country any principle in this matter different from that adopted by the Courts in England. As I understand the English decisions the Courts do not require security, because the plaintiff is a pauper or because he is a mere trustee, but they do require security when they find that he is not the real litigant. As Sir Montague

Smith puts it, if the plaintiff is suing for another, security is required. 1887

The real question is whether the plaintiff is suing for himself or for another. In this case the plaintiff has a substantial interest in the suit, and, as far as I can see, the suit has been instituted by him on his own behalf. I must on the affidavits find this as a fact, and I must hold that this suit is really the plaintiff's suit, and that his name is not used by others for their own purposes. He is, I think, suing for himself and not for any one else.

The application must be dismissed with costs.

T. A. P.

Application dismissed.

Attorney for plaintiff: Mr. Temple.

Attorneys for defendant: Messrs. Watkins & Co.

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CIVIL REFERENCE.

Before Mr. Justice Tottenham and Mr. Justice Norris.

JAGADAMBA DEVI (PLAINTIFF) v. PROTAP GHOSE AND OTHERS
(DEFENDANTS).*

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May 21.

Bengal Tenancy Act (Act VIII of 1885), s. 149—Suit by third party claiming rent paid into Court in rent suit, Nature of—Title Suit—Institution Stamp.

A suit by a third person under clause (3) of s. 149 of the Bengal Tenancy Act is not a title suit and need not be stamped as such.

Per TOTTENHAM, J.—Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit.

THIS case was referred by the District Judge of Birbhum under the provisions of s. 617 of the Civil Procedure Code for the decision of the High Court.

The facts were as follow: In a suit for rent by one Rash Bihari Mitra against Protap Ghose and Bishun Laha before the Munsiff of Dubrajpore, the defendants alleging that the rent claimed, namely Rs. 2-11-6, was due to one Jagadamba Devi, paid it into Court under the first clause of s. 149 of the Bengal Tenancy Act (Act VIII of 1885).

Notice under the second clause of that section having been served on Jagadamba Devi she filed a suit within three months

* Civil Reference No. 5A of 1887, made by J. Whitmore, Esq., Judge of Birbhoom, dated the 31st of March, 1887.