

APPELLATE CIVIL.

1902
April 2.

Before Mr. Justice Knox and Mr. Justice Blair.

NANDAN PRASAD (DEFENDANT) v. W. C. KENNEY (PLAINTIFF).*

Civil Procedure Code, sections 25, 403 et seqq.—Transfer—Application for leave to sue in formâ pauperis filed in Court of Subordinate Judge—Application transferred by District Judge to his own file—District Judge not thereafter competent to send the suit back to the Subordinate Judge for trial.

A pauper plaintiff presented to a Subordinate Judge an application for leave to sue as a pauper. This application was, by means of an order under section 25 of the Code of Civil Procedure, taken on to the file of the District Judge and heard and granted by him. *Held* that the District Judge had no power subsequently to transfer the pauper suit thus initiated back to the file of the Subordinate Judge. *Amir Begam v. Prahlad Das* (1) referred to.

THE respondent in this appeal presented in the Court of the Subordinate Judge of Cawnpore an application for leave to sue as a pauper, and a date was fixed for inquiry into his means. At the respondent's request this application was transferred to the Court of the District Judge. The Judge admitted the application for leave to sue *in formâ pauperis*, and having done so sent the suit back to the Court of the Subordinate Judge for trial. At the hearing before the Subordinate Judge it was objected that as the Judge had once transferred the case to his own file, he was not competent to retransfer it to that of the Subordinate Judge. This objection was, however, overruled, and a decree passed in favour of the plaintiff. The defendant appealed to the District Judge, before whom the objection as to jurisdiction was repeated. The objection was again disallowed, and the appeal was dismissed.

The defendant appealed to the High Court.

Pandit *Moti Lal Nehru*, for the appellant.

Mr. *C. Dillon*, for the respondent.

KNOX and BLAIR, JJ.—The sole plea argued before us was that the learned Judge had no jurisdiction either to retransfer the trial of this case to the Subordinate Judge, or to hear the

* Second Appeal No. 910 of 1899, from a decree of J. Sanders, Esq., District Judge of Cawnpore, dated the 9th of November, 1899, confirming a decree of Sheikh Maula Bakhsh, Officiating Subordinate Judge of Cawnpore, dated the 20th of July, 1899.

appeal from the decree of the Subordinate Judge. It appears that one Kenney, who is respondent before us, presented an application to sue *in formá pauperis* in the Court of the Subordinate Judge of Cawnpore. The District Judge of Cawnpore, acting under section 25 of the Code of Civil Procedure, withdrew this application and decided it himself. After deciding it, he retransferred the suit for trial to the Court of the Subordinate Judge. It is this order of transfer, and all that followed it, which is impugned by the appellant. In support of this contention the learned advocate for the appellant drew our attention to the case of *Amir Begam v. Prahlád Das* (1). That case is undoubtedly an authority. The only way in which the learned counsel for the respondent tried to distinguish it is, that when the application for permission to sue as a pauper was decided, the suit, which then came into existence, returned automatically—to use his own expression—to the Court which had jurisdiction to hear and determine it, *i.e.* the Court of the Subordinate Judge of Cawnpore. We see no authority for holding that there is any breach of continuity between the application to sue *in formá pauperis* and the suit into which that application matures. According to section 410 of the Code of Civil Procedure, the application, as soon as it is granted, is deemed the plaint in the suit, and it has more than once been ruled by this Court that in such a case the plaint really dates back to the date of the application, not to the day when the application is granted and registered.

This appeal must, therefore, succeed, and we decree this appeal and set aside all proceedings which have taken place after the date on which the District Judge granted the application to sue *in formá pauperis*. All these proceedings were without jurisdiction. The case must go back to the learned Judge, with directions to take it up from that point and to determine it according to law. The appellant will get the costs of this appeal.

Appeal decreed.

(1) Weekly Notes, 1902, p. 66.

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