

APPELLATE CIVIL.

1902
November 5.*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*

AKBAR HUSAIN (DEFENDANT) v. ALIA BIBI (PLAINTIFF).*

Civil Procedure Code, sections 401 et seqq.—Suit in formâ pauperis—Death of plaintiff—Decree passed in ignorance of plaintiff's death—Appeal—Consent order for re-trial—Objection to plaintiff's representative suing in formâ pauperis—Estoppel.

The plaintiff in a suit brought *in formâ pauperis* died, but in ignorance of her death the Court passed a decree in her favour. The defendant appealed, making respondent to his appeal a lady whom he alleged to be the legal representative of the deceased plaintiff. On this appeal an order was passed by consent of parties sending back the suit to be re-tried on the merits as between the defendant and the person nominated by him as plaintiff, and it was so re-tried, and a decree was again passed in favour of the plaintiff. *Held* that it was not thereafter open to the defendant to object that there had been no inquiry into the right of the representative of the original plaintiff to sue as a pauper.

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

Mr. *Abdul Majid*, for the appellant.

Mr. *Karamat Husain* and *Maulvi Ghulam Mujtaba*, for the respondent.

STANLEY, C.J. and BANERJI, J.—The suit out of which this appeal has arisen was a suit brought by one Musammat Zainab, who claimed a right to sue *in formâ pauperis*. On the 24th of April, 1896, Musammat Zainab, who had gone on a pilgrimage to Mecca, died; but in ignorance of her death the hearing of the suit was allowed to proceed, and a decree was passed in her favour on the 30th of June, 1896. Subsequently, the death of Musammat Zainab having been in the meantime ascertained, an appeal was preferred to the High Court to have the decree of the 30th of June, 1896, set aside; the present respondent Musammat Alia Bibi, as legal representative of Musammat Zainab, being made a party to the suit for the purpose of that appeal. On the 15th of March, 1899, the appeal came on for hearing before a Bench of the High Court, whereupon both parties agreed that the decree should be set aside, and the case remanded to the Court below for trial as between the

* First Appeal No. 58 of 1900, from a decree of Babu Jai Lal, Subordinate Judge of Azamgarh, dated the 19th day of December 1899.

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defendants and the legal representative of the deceased plaintiff. Accordingly, by consent of the parties, the Court passed an order allowing the appeal, setting aside the decree of the Court below, and remanding the case to that Court to be readmitted under its original number on the register, and to be tried on the merits. The suit has, in accordance with the order of this Court, been tried on the merits between the parties to the appeal, that is the present appellant and the present plaintiff respondent as representative of Musammât Zainab, with the result that a decree was passed in favour of the plaintiff.

It is now objected that a decree ought not to have been passed, nor should the respondent have been allowed to sue *in forma pauperis* without an inquiry first having been held as to her alleged pauperism, and a determination obtained in her favour upon that issue.

It appears to us that there is nothing in this objection, for this reason that the parties to this appeal by consent in Court agreed that the case should be remanded to the Court below for trial on the merits, and an order was made accordingly. This order presupposes that the parties were properly before the Court, and that the suit *in forma pauperis* had been properly instituted. It is too late now to seek to go behind this order. Accordingly, as none of the other objections in the memorandum of appeal have been pressed before us by the learned counsel for the appellant, for the reasons which we have stated, the appeal fails. We therefore dismiss it with costs.

Appeal dismissed.

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Before Mr. Justice Knox and Mr. Justice Blair.

GOMTI KUNWAR (DEFENDANT) v. GUDRI (PLAINTIFF).*

Civil Procedure Code, section 13—Res judicata—Decision by a Court of Revenue in a suit for rent as to the genuineness of a document no bar to the determination of such issue by a Civil Court.

In a suit for rent brought in a Court of Revenue the plaintiff produced in support of his claim the counterpart of a lease alleged to have been executed by the defendant. The defendant denied execution, but the Revenue Courts, both original and appellate, decided against him that the counterpart was genuine. The defendant then brought a suit in a Civil Court, asking for

* First Appeal No. 62 of 1902, from an order of C. Rustomji, Esq., District Judge of Allahabad, dated the 30th of April, 1902.