REVISIONAL CIVIL.

1910
May 25.

Before Mr. Justice Karamat Husain and Mr. Justice Chamier.

MUHAMMAD AYAB (APPLICANT) *v.* MUHAMMAD MAHMUD AND OTHERS (OPPOSITE PARTIES.)*

Civil Procedure Code (1908), *section* 115—*Order granting an application for leave to sue* in formâ pauperis—*Revision.*

Held that no application in revision will lie to the High Court from an order granting an application for leave to sue in *formâ pauperis*. *Harsaran Singh* v. *Muhammad Raza* (1) and *Bhulneshri Dat* v. *Bidiadis* (2) followed. *Faiz Muhammad Khan* v. *Aziz-un-nissa* (3), *Musammat Changia* v. *Joti Prasad* (4), *Ghulam Shabbir* v. *Dwarka Prasad* (5) and *Debi Das* v. *Ejaz Husain* (6) referred to.

AN application for leave to file a suit *in formâ pauperis* was made to the Subordinate Judge of Allahabad and was granted by him. The defendant applied to the High Court in revision, praying that the Subordinate Judge's order might be set aside upon the ground that there was no valid presentation of the application for leave to sue *in formâ pauperis* and that the court below was therefore bound to have rejected it. At the hearing a preliminary objection was taken by the plaintiffs to the effect that the Subordinate Judge's order, being an interlocutory order, was not open to revision.

Babu *Jogindro Nath Chaudhri* (with him the Hon'ble Pandit *Moti Lal Nehru* and Babu *Satya Chandra Mukerji*), for the applicant.

Dr. *Satish Chandra Banerji* (with him Maulvi *Muhammad Ishaq*), for the opposite party.

KARAMAT HUSAIN, J.—This was an application to revise an order passed by the learned Subordinate Judge of Allahabad granting an application to sue *in formâ pauperis* and the court below was bound to reject it. At the hearing of this revision a preliminary objection is taken that inasmuch as the order is an interlocutory order, it cannot be revised. In support of this contention reliance is placed on *Harsaran Singh* v. *Muhammad Raza* (1) and on *Bhulneshri Dat* v. *Bidiadis* (2). In the

* Civil Revision No. 101 of 1909.

(1) (1881) I. L. R., 4 All., 91.
(2) Weekly Notes, 1882, p. 69.
(3) Weekly Notes, 1893, p. 218.
(4) Civil Revision No. 24 of 1910, dated May 24th 1910.
(5) (1895) I. L. R., 18 All., 163.
(6) (1905) I. L. R., 28 All 72

1910

MUHAMMAD AYAB v. MUHAMMAD MAHMUD.

latter case STRAIGHT and OLDFIELD, JJ., following the rulings of this Court, held that they "could not interfere in revision with the Subordinate Judge's order refusing the application of the petitioners to sue *in formâ pauperis*." The learned advocate for the applicant relies on *Faiz Muhammad Khan* v. *Aziz-un-nissa* (1), in which a single Judge of this Court came to the conclusion that a revision of an order rejecting an application to sue *in formâ pauperis* would lie to this Court. This case was followed by BANERJI, J., in *Musammat Changia* v. *Joti Prasad* (2), in which an application for revision of an order of the District Judge rejecting an application *in formâ pauperis* was allowed. The learned advocate for the applicant also relies on *Ghulam Shabbir* v. *Dwarka Prasad* (3), which lays down that the High Court could interfere in revision under section 622 of Act XIV of 1882, although it was possible that the matters complained of might be ground for a separate suit, and also on *Debi Das* v. *Ejaz Husain* (4), which lays down that the revisional powers of the High Court will not invariably be confined to matters in respect of which no other remedy is open to the party aggrieved. Having regard to the course of decisions of this Court I am of opinion that the preliminary objection taken by the learned advocate must prevail. A distinction, however, is to be drawn between the cases in which an application *in formâ pauperis* is rejected and cases in which it is granted. When it is rejected the "case" of the applicant comes to an end and is to be governed by the rulings in Weekly Notes, 1893, page 218 and in Civil Revision No. 24 of 1910, decided on the 24th of May, 1910. But when the application is granted the "case" of the pauper is not in my opinion decided within the meaning of section 115 of the new Code of Civil Procedure. Following, therefore, the rulings in I. L. R., 4 All., p. 91 and in W. N., 1882, p. 69, I would give effect to the preliminary objection and dismiss the application.

CHAMIER, J.—I agree. Under the present Code of Civil Procedure it seems to be quite clear that the "case" must have been decided before the High Court can interfere in revision. I

(1) Weekly Notes, 1893, p. 218.
(2) Civil Revision No. 24 of 1910, decided on the 24th of May, 1910.
(3) (1895) I. L.R., 18 All., 163.
(4) (1905) I. L. R., 28 All., 72.

1910

MUHAMMAD AYAB v. MUHAMMAD MAHMUD.

am not prepared to subscribe to the view that no proceeding can be a "case" unless it terminates in a decree. But giving the word "case" the widest meaning that was given to that word in section 622 of the Code of 1882, I am unable to hold that the order against which this application for revision is presented decided any "case." It appears to me that there is a clear distinction between the case of an application for permission to sue or appeal *in formâ pauperis* being dismissed or rejected and the case in which a similar application is allowed. In the former it may be said that the case had been decided, while in the latter the order appears to be merely interlocutory.

BY THE COURT.—The application is rejected with costs.

Application rejected.

APPELLATE CIVIL.

1910
May 27.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

BATUL KUNWAR (DEFENDANT) *v.* MUNNI LAL (PLAINTIFF).*

Code of Civil Procedure (1882), *section* 43 —*Portion of claim—Intentional omission—Civil Procedure Code* (1908), *order II, rule* 2 (2).

G, who was the tenant of a holding, died, leaving a mother and a daughter, both of the same name. The plaintiff sued the mother, as representing G, for arrears of rent for 1313 Fasli and obtained an *ex parte* decree. In respect of the year 1314 he sued the daughter and obtained a decree. The decree in respect of 1313 was set aside and at the rehearing the daughter was made a party. It was found that at the time the plaintiff brought the suit in respect of 1314 he was not aware that the daughter was the tenant in 1313. *Held* that the plaintiff having no knowledge, when he brought his suit in respect of 1314, that the daughter was the tenant in 1313, could not be said to have omitted to sue in respect of that year, and the suit for 1314 was not barred by the provisions of section 43 of the Code of Civil Procedure (1882). *Amanat Bibi* v. *Imdad Husain* (1) referred to.

THE facts of the case were as follows:—

One Gokul Singh, an agricultural tenant, died leaving him surviving his mother and a daughter, both of the name of Batul Kunwar. They continued to reside on the holding of Gokul Singh. On the 17th of July, 1906, the plaintiff sued the mother for the rent of the year 1313 F. and obtained an *ex parte* decree

* Appeal No. 1 of 1910 under section 10 of the Letters Patent.

(1) (1888) L. R., 15 I. A., 106; I. L. R., 15 Calc. 800.