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inscribed in the order sheet that judgement would be delivered on a certain date. Further, he wrote out what took the form of a judgement in the case and place it upon the record. Before the appointed day arrived he ceased to be the Subordinate Judge of Jhansi. His successor in office did not pronounce the judgement written by his predecessor, but took a totally different view of the case from his predecessor and delivered a judgement contrary to that which, it would appear, his predecessor had intended to deliver. It is contended before us that the judgement which was written but not pronounced by the predecessor should have been pronounced by the Judge who succeeded him in office. Authority for this contention is based upon the words used in order XX, rule 2, and it is contended that the words "it may pronounce" are mandatory and left the successor no option but to pronounce the judgement which he found upon the record. No authority has been given to us for this view. On the other hand, we are indebted to the other side who referred us to *Re Baker; Nicholas* v. *Baker* (1), adopted by the Calcutta High Court in *In the Goods of Prem Chand* (2). We agree with the Calcutta High Court as to the meaning to be put upon the word "may," and dismiss the appeal with costs.

Application dismissed.

Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

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KAPIL DEO SINGH (PLAINTIFF) APPLICANT v. RAM RIKHA SINGH AND OTHERS (DEFENDANTS) OPPOSITE PARTIES.*

Civil Procedure Code (1908), *order XXXIII, rule* 1—*Inquiry into pauperism—Claim for redemption of mortgage—Applicant able to raise money upon security of equity of redemption.*

Held that a plaintiff seeking to sue for redemption *in formâ pauperis* cannot claim to sue as a pauper so long as he can raise money on his equity of redemption and that in so doing he will not in effect be mortgaging his claim. *Vedanta Desikacharyulu* v. *Perindevamma* (3) distinguished.

THIS was an application for leave to sue *in formâ pauperis*. The facts were these:—The applicant applied for leave to sue as a pauper for the redemption of a certain mortgage. He was

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* Civil Revision No. 64 of 1910.

(1) (1894) I. L. R., 21 Calc., 832. (2) (1890) 44 Ch. D., 262.
(3) (1881) I. L. R., 3 Mad., 249.

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examined and he stated that he had no other property excepting that which he was suing to redeem. The court fixed a date for inquiry into the alleged pauperism. On the date fixed the opposite party put in objections to the effect that the applicant was a man of means and not a pauper. Neither the applicant nor the opposite party produced any evidence. The court made the following order:—"The applicant has, on his own showing, the equity of redemption, and there is nothing to show that he cannot obtain money on its security. I believe he is not a pauper, and dismiss the application with costs." The applicant applied to the High Court for revision of this order.

Babu *Sarat Chandra Chaudhri* (for Dr. *Satish Chandra Banerji*), for the applicant:—

The Subordinate Judge did not enter into the merits of the application at all. He rejected it merely on the ground that as the applicant could possibly raise funds on the security of his equity of redemption he was not a pauper. But this very equity of redemption was the subject matter of his suit. It has been ruled that a pauper is not obliged to raise funds by mortgaging his claim; *Vedanta Desikacharyulu* v. *Perindevamma* (1). The Subordinate Judge should have made a proper inquiry into the circumstances of the applicant and have ascertained whether or not he was a pauper within the meaning of order XXXIII, rule 1.

Mr. *M. L. Agarwala* (with him Munshi *Govind Prasad*), for the opposite party:—

The Subordinate Judge was right in his opinion. The applicant could raise money on the security of his equity of redemption, which might be of considerable value. The equity of redemption was not the subject-matter of the suit. What was sought to be redeemed was the physical property itself and not the equity of redemption, which is a right quite distinct and separate from the *corpus* of the property. If the applicant's contention were right, then there could be no *puisne* mortgages. Then, the case is not one in which a revision should be entertained. There is no question of jurisdiction; there has been no material irregularity. It is not alleged that the applicant tendered any

(1) (1881) I. L. R., 3 Mad., 249.

evidence which the court refused to entertain or consider. There is no evidence on the record, other than the statement of the applicant himself. On that evidence the court rightly or wrongly came to the conclusion that he was not a pauper. Misappraisement of evidence is no ground for revision. The case is governed by the ruling of *Kamrakh Nath* v. *Sundar Nath* (1) which followed the case of *Chattarpal Singh* v. *Raja Ram* (2).

Babu *Sarat Chandra Chaudhri*, in reply:—

In the present case the matter has not at all been gone into as to whether the applicant is a pauper or not. It is not the petitioner's plea that his evidence has been wrongly disbelieved, but that it has not been considered at all. The Subordinate Judge does not say that he disbelieved the petitioner's statement; if that had been the case, then no revision would have lain. A revision does lie if the court has failed to deal with the question of the applicant's pauperism with reference to the definition of a "pauper"; *Muhammad Husain* v. *Ajudhia Prasad* (3), *Secretary of State* v. *Jillo* (4).

KNOX and KARAMAT HUSAIN, JJ.:—This application is for revision of an order passed by the Subordinate Judge of Ghazipur. The Subordinate Judge had before him an application on the part of the petitioner seeking to be permitted to sue *in formâ pauperis* The Subordinate Judge, as we find from the record, fixed a day for receiving whatever evidence the applicant might adduce in proof of his pauperism. He examined the applicant, and it was not shown to us that any evidence tendered by the petitioner was rejected by the court unheard. After examining the petitioner, the court wrote as follows:—

"The applicant has on his own showing the equity of redemption, and there is nothing to show that he cannot obtain money on its security. I believe he is not a pauper and dismiss the application with costs."

The suit which the petitioner desired to institute was a suit asking for redemption of the whole of a certain property set out in the schedule attached to the plaint. On behalf of the

(1) (1898) I. L. R., 20 All., 299.
(2) (1885) I. L. R., 7 All., 661.
(3) (1888) I. L. R., 10 All., 467 (479).
(4) (1898) I. L. R., 21 All., 133, (136).

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petitioner we are referred to the case of *Vedanta Desikacharyulu* v. *Perindevamma* (1), and we were asked to hold that a person praying for the relief which the plaintiff sought, should not be refused permission to sue *in formâ pauperis* and to be left to raise funds by mortgaging his claims. It has, however, been pointed out to us by the other side, and we accept the contention, that the petitioner in trying to raise money upon the equity of redemption would not in effect be mortgaging his claim. The equity of redemption in many cases is property of far greater value than the mortgage which the person instituting the suit may be seeking to redeem. If any obscurity remains in the present case it is the fault of the plaintiff that he did not remove that obscurity. There is no right existing to sue *in formâ pauperis*. It is an exemption from the ordinary rule which he claims from the court and the burden of proving the exemption lies upon the person who claims the exemption. We are not satisfied that the court was in error when it held that the petitioner had not proved his pauperism. As he had not proved his pauperism the court was within its jurisdiction in refusing permission. We dismiss the application with costs.

Application dismissed.

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Before Mr. Justice Sir George Knox and Mr. Justice Karamat Husain.

NAGAR MAL AND OTHERS (APPLICANT) *v.* RAM CHAND (OPPOSITE PARTY).*

Civil Procedure Code (1908), order XXI, rules 18, 19, 20—*Execution of decree—Cross decrees—Set-off—Money decree—Decree for enforcement of charge.*

Held that under the Code of Civil Procedure (1908) a court is competent to set off a simple decree for recovery of money against a decree for recovery of money by enforcement of a charge.

THE facts of this case were as follows:—The applicants held a simple money decree against the opposite party. The latter held a decree against the applicants for the recovery of a certain sum of money by enforcement of a charge against their immovable property. The first mentioned decree was for a smaller amount than the latter. The executing court (Subordinate Judge of Cawnpore) set off the two decrees against each other and

* Civil Revision No. 72 of 1910.

(1) (1881) I. L. R., 3 Mad., 249.