

REVISIONAL CIVIL

*Before Sir Lal Gopal Mukerji, Acting Chief Justice, and
Mr. Justice Thom*

1932
December, 2.

PIARE LAL (APPLICANT) v. BHAGWAN DAS AND ANOTHER
(OPPOSITE PARTIES) *

Civil Procedure Code, order XXXIII, rules 2 and 5—Application for leave to sue as pauper—Verification defective—Civil Procedure Code, sections 151, 153; order VI, rule 15(2)—Duty of court to give opportunity for amendment of verification—Rejection of application without giving such opportunity—Abuse of the process of the court—Civil Procedure Code, section 115—Material irregularity in the exercise of jurisdiction—“Case decided”.

An application for leave to sue as a pauper was rejected under rule 5 of order XXXIII of the Civil Procedure Code on the ground that the requirements of rule 2 regarding verification were not complied with inasmuch as the verification was not in accordance with order VI, rule 15(2). *Held*, in revision,—

A revision lies from an order rejecting an application for leave to sue as a pauper.

Section 153 of the Civil Procedure Code says not only that the court may at any time amend any defect or error in any proceeding in a suit, but it further emphasises the duty of the court by saying that all necessary amendments shall be made for the purpose of determining the real question in issue. It was the duty of the court, when it found that a defect in verification was there, to offer an opportunity to the applicant to correct the verification. The court had failed to use the powers conferred on it by section 153, and this improper procedure, which had led to a denial of justice and frustrated the object for which the courts exist, amounted to material irregularity in the exercise of its jurisdiction within the meaning of section 115 and a revision was maintainable.

It would amount to an abuse of the process of the court within the meaning of section 151 of the Civil Procedure Code if the applicant had to make a fresh application for permission to sue as a pauper simply because his first application was rejected on the mere technicality that it was badly verified.

* Civil Revision No. 305 of 1932.

Messrs. *K. Verma* and *G. S. Pathak*, for the applicant.

Mr. *B. Malik*, for the opposite parties.

MUKERJI, A. C. J., and THOM, J. :—These are four applications in revision and are directed against four orders by which the petitions of the applicant for permission to sue as a pauper have been rejected.

It appears that the applicant Peare Lal filed four applications in the same court for permission to sue as a pauper. The applications were directed against different opposite parties. The court below came to the conclusion that the applicant was entitled to sue as a pauper, but was of opinion that his applications must be rejected because the verification at the foot of the applications was not according to law.

The applications did, as they should, take the form of a plaint and contain the necessary allegations that were required to be made in a plaint but were not so verified as a plaint should be. The law (order VI, rule 15 of the Code of Civil Procedure) says: "The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true." The verification contained in the several petitions was to the effect that the statements made were true to the knowledge and belief of the applicant. The applicant did not say which of the statements he verified from his personal knowledge and which he verified from information received and believed to be true.

Order XXXIII, rule 5, says: "The court shall reject an application for permission to sue as a pauper, (a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or etc." Rule 2 referred to states that "Every application for permission to sue as a pauper shall . . . be signed and verified

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in the manner prescribed for the signing and verification of pleadings." This means that the verification should be in the manner indicated in order VI, rule 15(2) of the Code of Civil Procedure.

The applicant has come up before us in revision and says that the court ought to have directed an amendment of the verification and that, if he had failed to correct the verification, then certainly it was open to the court below to dismiss his application.

On behalf of the respondents (some of whom have not appeared) it is contended that no revision lies and the petitions in revision cannot be maintained.

It has been held in several cases in this Court that where a court admits an application to sue as a pauper and thereby converts the application into a plaint, no revision is maintainable to contest the validity of the order accepting the application for permission to sue as a pauper; but where the order is one rejecting the application and thereby putting an end to the proceedings before the court below, a revision is maintainable. The latest case on this point is *Sumitra Devi v. Hazari Lal* (1). Then it was argued by the learned counsel for the respondent that the power of the High Court to interfere in revision is confined to a case of jurisdiction alone and the High Court cannot interfere if the court below has committed an error of law or of fact. There can be no doubt that this is a correct view of the law so far as it goes, and in the case of a mere mistake of fact or of law by a subordinate court the High Court cannot interfere with it in revision. Such was a case which went up before their Lordships of the Privy Council, see *Amir Hassan Khan v. Sheo Baksh Singh* (2). In that case the question was whether the decision of the court below that the suit was not barred by sections 13 and 43 of the Civil Procedure Code

(1) (1930) I.L.R., 52 All., 927.

(2) (1834) I.L.R., 11 Cal., 6.

of 1877 was a correct decision. The Judicial Commissioner of Oudh acting as a High Court decided that the suit was barred and their Lordships of the Privy Council held that the High Court had overstepped its function.

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Section 115(c) states that where in the exercise of its jurisdiction a court acts illegally or with material irregularity the High Court may interfere. This means that where the subordinate court is possessed of jurisdiction and in the exercise of it acts illegally or with material irregularity a revision is maintainable. Acting illegally or with material irregularity does not mean committing an error in the decision arrived at; but where a procedure has been adopted which is grossly improper and which has led to a denial of justice, it may surely be said that the court has acted with material irregularity in the exercise of its jurisdiction. Accordingly it has been held that where an award has been made and a court upholds it without giving the parties a chance to contest the validity of the award, the High Court can interfere, although it was within the competence of the court below to decide that the award was a valid one. For the reasons given above we see no ground for limiting our authority to interfere with the judgment to a case in which a question of jurisdiction has arisen.

Now, coming to the merits of the case, we find that the learned Munsif did not exercise his authority, which he was bound to exercise in view of section 153 of the Code of Civil Procedure. Sections 151, 152 and 153 are very salutary provisions of law and are meant to invest the courts with authority to see that the object for which courts exist is carried out and that the merest technicality may not be allowed to stand in the way of substantial justice. We can in this connection also refer to section 99 of the Code of Civil Procedure as having been framed with the same object

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in view. It is a matter of history now that there was a time when suits were dismissed and plaints were rejected because the plaints were not properly verified. Section 153 says not only that the court may at any time amend any defect or error in any proceeding in a suit, but it further emphasises the duty of the court by saying that "all necessary amendments *shall be made* for the purpose of determining the real question or issue raised by or depending on such proceeding." Can we say in this case, that the learned Munsif has used his powers conferred upon him by section 153 by seeing that all necessary amendments have been carried out, so that the real controversy between the parties may be determined?

There can be no doubt that order XXXIII, rule 5 empowers a court to reject an application for permission to sue as a pauper if it is not properly framed as directed therein; but this can only mean that no amendments were possible and the defects could not be rectified for some reason or other. In our opinion it was the duty of the court when it found that a defect in verification was there, to offer a chance to the applicant to correct the verification. If that chance was not availed of, it was certainly open to the court to reject the application. We do not agree that the remedy by instituting a second application for permission to sue as a pauper was the right and proper remedy in such a case. The rule of limitation may stand in the way of the second application. Then what about the unnecessary costs to be incurred by the parties in going over the same procedure which had been already gone through?

Section 151 of the Code of Civil Procedure says: "Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court." Will it not be an abuse of the process of the court if

the applicant is called upon to make a fresh application for permission to sue as a pauper simply because his first application was badly verified?

We want to lay emphasis on the feature that our decision has not been arrived at simply because we consider that these are hard cases but because we consider that the object for which the courts exist, namely, doing justice, has not been kept in view by the orders in question.

In the result, we allow the applications, set aside the orders complained of and remand the cases to the court below and direct it to give the applicant a sufficient opportunity to enable him to correct the verification of his petitions. After the petitions have been verified the court will proceed to decide the petitions on their merits.

APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Kisch.

AMBA LAL (OBJECTOR) *v.* RAMGOPAL MADHOPRASAD
(DECREE-HOLDER)*

1932
December, 5.

Civil Procedure Code, sections 144 and 151—Restitution—Sale in execution of simple money decree—Decree-holder purchaser—Rateable distribution amongst several decree-holders—Judgment-debtor's title subsequently found invalid as the result of a separate suit—Application by decree-holder purchaser for restitution of amounts rateably distributed—Inherent power to order restitution—Caveat emptor, doctrine of—Duty of courts to prevent injury by act of court.

In execution of a simple money decree the judgment-debtors' shares in certain joint family properties were sold by auction, the decree-holder being the purchaser. At that time a decree for partition among the judgment-debtors' family, which had allotted most of these properties as the separate shares of other members of the family, was in existence and on its basis objections under section 47 of the Civil Procedure Code were raised and a suit was filed by these other members, but the

* First Appeal No. 390 of 1929, from a decree of S. Nawab Hasan, Additional Subordinate Judge of Aligarh, dated the 8th of August, 1928.