APPELLATE CIVIL.

Before Mr. Justice Baguley and Mr. Justice Mosely.

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May 23.

MA YON AND OTHERS
v.
MA SHWE THIN.*

Pauper suit—Form and substance—Amendment of mistakes—"De minimis non curat lex"—Amended application presented by pauper's pleader—Civil Procedure Code (Act V of 1908*), Order* 33.

An application for leave to sue as a pauper must be in proper form so that the Court may see at once that the application is presented to a Court of proper jurisdiction, and that the valuation for the purposes of Court-fee mentioned in the application requires on the face of it a fee which the applicant cannot pay if he possesses only the property which he alleges that he possesses in his schedule. What is required is that the form, and not necessarily the substance of the application, shall be correct, and the Court can allow a clerical mistake in the computation of court-fees to be corrected by way of amendment.

Ambaji v. *Hanmant Rao*, I.L.R. 47 Bom. 104; *Lim Pin Sin* v. *Eng Wan Hock*, I.L.R. 6 Ran. 561; *Maung Shwe Tha* v. *Ma U Kra Zan*, I.L.R. 10 Ran. 475; *U Ba Dwe* v. *Maung Lu Pan*, I.L.R. 10 Ran. 357—*referred to.*

Maung Pe Kye v. *Ma Shwe Zin*, I.L.R. 7 Ran. 359—*dissented from.*

Even as regards form the principle *de minimis non curat lex* applies in a proper case. Where the original application was presented by the pauper and the Court ordered its amendment in certain particulars, and then it was presented by the applicant's pleader, *held*, that it was not essential that the amended application should have been presented by the applicant in person.

Sanyal for the applicants.

Bose for the respondent.

BAGULEY and MOSELY, JJ.—This is an application in revision against the order of the District Judge permitting the plaintiff-respondent Ma Shwe Thin to sue as a pauper.

Ma Shwe Thin in her original application applied to sue the first defendant-appellant Ma Yon alone for a half share in property left by U Pe, deceased.

* Civil Revision No. 87 of 1932 (at Mandalay) from the order of the District Court of Lower Chindwin in Civil Misc. No. 2 of 1932.

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She said Ma Yon was the other wife of U Pe, and valued the property at Rs. 33,000. The plaintiff gave a list of her property, amounting to Rs. 125, consisting of a house, clothes and furniture. The Court-fee was given as Rs. 670. The first defendant-appellant Ma Yon made a written objection, in which she said that some of the property claimed as the estate of U Pe was not in her possession, and that it had been given away by her husband to their children, whose names she gave. She also said that some of the property was the joint property of her and her nephew, and some of it belonged to another nephew, and other of it had been sold by U Pe in his lifetime to persons, whose names she gave. The suit, of course, should originally have been filed not as one for partition, but for administration. The Court then of its own motion directed that the application be amended so as to include the other persons mentioned by Ma Yon to be interested in the estate. The amended plaint was presented not by the applicant herself in person as is required by Order 33, Rule 3, but by her pleader. The schedule of property attached to the amended application was itself also amended. It raised the value of the property to Rs. 35,000, and the Court-fee, therefore, to Rs. 700. The difference lay in the fact that jewellery in Ma Yon's possession was now valued at Rs. 5,000 instead of Rs. 2,500; while two small houses valued at Rs. 300 and Rs. 200 in the first application were left out; perhaps they were a duplication by mistake of two other small houses valued at Rs. 300 and Rs. 200.

It is now contended in revision that no amendment of the application should have been allowed, that in particular the Court-fee and valuation could not be amended, that the amended application should

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have been presented in person, that the applicant has on the District Judge's own finding been found to own more property than she has admitted, namely a pair of imitation pearl earrings worth Rs. 15, and that for all these reasons the application should have been rejected under Order 33, Rule 5 (*a*).

We may say at once about the earrings that the *Akunwun's* report was not admissible in evidence, and that the evidence did not prove that Ma Shwe Thin owned this or any property other than that she purported to own, and there was no presumption, as the Judge thought, that she had omitted any other items of property as well.

It is conceded that if this suit had been brought in the ordinary way, the amendments would have been quite right and proper ones. We do not think that the right of a pauper applicant to amend his application was ever questioned in this Province until possibly in the decision in *Maung Pe Kye* v. *Ma Shwe Zin* (1) ; for example, an amendment was allowed without question in *Lim Pin Sin* v. *Eng Wan Hock* (2), as it was in the case referred to therein, *Ambaji* v. *Hanmant Rao* (3).

In *Pe Kye's* case his application for permission to sue as a pauper was rejected in the District Court on the ground that the value for the purposes of Court-fee had been wrongly calculated, that is to say calculated on a wrong basis. It would seem in that case that the value had been calculated in the application *ad valorem*, whereas it should have been calculated at a much smaller amount on the proper basis, namely 5 times the land revenue, under clause 5 (*b*) of s. 7 of the Court-fees Act. That order of rejection was upheld in

(1) (1929) I.L.R. 7 Ran. 359. (2) (1928) I.L.R. 6 Ran. 561.
(3) (1922) I.L.R. 47 Bom. 104.

appeal by a single Judge of this Court, Maung Ba J. There Maung Ba J. said:

"The question is whether such a wrong calculation offends clause (*a*) of Rule 5 of Order 33 of the Code of Civil Procedure. A Court shall reject an application for permission to sue as a pauper where it is not framed in the manner prescribed by Rule 2. That rule lays down that such applications shall contain the particulars required in regard to plaints in suits. Rule 1 of Order 7 enumerates such particulars, and one of them is a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and Court-fees so far as the case admits. S. 7 of the Court-fees Act prescribes the mode of computing Court-fee value. In the present case applicant has not calculated the Court-fee value in accordance with that section. When such a defect occurs in an application for leave to sue as a pauper, Rule 5 of Order 33 leaves the Court no discretion, but it must reject the application. The District Court's order was justified. Applicant appears to have still a right to present a fresh application."

In *U Ba Dwe v. Maung Lu Pan* (1) and *Maung Shwe Tha* v. *Ma U Kra Zan* (2) it was held by Benches of this Court, overruling the last part of Maung Ba J.'s judgment, that where an application to sue as a pauper is rejected under Order 33, Rule 5 (*a*), no fresh pauper application can lie. The order is tantamount to one under Order 33, Rule 7 (*3*) refusing to allow the applicant to sue as a pauper, and under Rule 15, such an order shall be a bar to any subsequent application of the like nature by the applicant in respect of the same right to sue.

Rule 1 (*c*) of Order 7 requires the names, descriptions and place of residence of the defendant or defendants to be given so far as they can be ascertained. Here in the original application the plaintiff had given them so far as lay in her knowledge; other details were within the special

(1) (1932) I.L.R. 10 Ran. 357. (2) (1932) I.L.R. 10 Ran. 475.

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knowledge of the defendants. Order 7, Rule 1 (i) does not require that the Court-fee be stated. It merely requires that the value of the subject-matter shall be stated for the purpose of jurisdiction and of Court-fees so far as the case admits. (The last words refer presumably to cases such as suits for accounts, where the value may not be forthwith capable of estimation. Much less does the sub-section demand that the value be correctly stated. What is apparently required is, as mentioned in Order 33, Rule 4 (*1*), that the application be in proper form in order that the Court may see at once that the application is presented to a Court of proper jurisdiction, and that the valuation for the purposes of Court-fee mentioned in the application demands on the face of it a fee which the applicant cannot pay if he possesses only the property which he alleges he possesses in his schedule. We would, therefore, with respect, differ from *Pe Kye's* case if it is intended to lay down there that any clerical mistake or other mistake in the computation of (as opposed to valuation for) Court-fees will render a pauper applicant liable without remedy to the extreme penalty of having his application rejected for ever.

It may be that if the application is not in the right form or duly presented, the Court has no option under Rule 5 except to reject the application. It may be that no amendment of form can be allowed (though even here we would say that the principle *de minimis non curat lex* should apply); but there is nothing, we consider, in the order which prevents an amendment not as to form but as to substance. Where the effect of the legislation is to penalize an applicant for a defect of form, that legislation must be strictly construed,

and not construed in his disfavour. There is no reason, we think, why the ordinary principles of amendment of the substance of the plaint should not be followed, and indeed, as we have said, this had hitherto, up to *Pe Kye's* case, been done without question.

As regards the fact that the amended application was presented by the applicant's pleader, it must be remembered that it was amended by the direct order of the Court. Were the applicant to be penalized for this, she could only be forced to fall back on the original application. The reason why it is insisted on in Rule 3 that the application be presented by the applicant in person, unless he is exempted from appearance in Court, is, as laid down in Rule 4 (*1*), that the Court may examine him at once regarding the merits of his claim, to see that it shows a cause of action, and regarding his property. Subsequent enquiries are confined to pauperism, and it is the duty of the Court to ascertain at once that the applicant's allegations constitute a claim that can be litigated on. The Court itself directed the amendment in this case, and we do not think it reasonable to hold it requisite that the amended claim must be presented by the applicant in person.

For these reasons we consider that the order of the District Court was justified throughout, and we dismiss this application in revision with costs, advocate's fee two gold mohurs.