

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Birdwood.

MANOHAR RA'MCHANDRA AND ANOTHER, APPLICANTS, v.
LAKSHMAN MAHA'DEV, OPPONENT.*

1885
February 26.

*Civil Procedure Code, Act XIV of 1882, Sec. 407, Clause (d)—Pauper—
Vakil—Agreement—Subject-matter.*

Two persons, being about to sue to redeem a certain *jághir* village which they had mortgaged, applied for permission to sue as paupers. It appeared that they had entered into an agreement with a vakil to pay him, as remuneration for his services as vakil in the case, a lump sum of Rs. 1,500 as soon as the case was decided. In default of payment the vakil was authorised to recover the money out of the revenues of the said village.

Held, that such an agreement was within the scope of clause (d) of section 407 of the Civil Procedure Code (XIV of 1882), and their application to sue as paupers was rejected.

THIS was a reference, under section 617 of the Code of Civil Procedure, Act XIV of 1882, by Khán Bahádur Edalji Manjibhai Modi, Subordinate Judge of Ahmednagar.

The applicants applied for permission to sue in *formá pauperis* to redeem their *jághir* village of Karhe Takli, táluca Shevgaon, mortgaged, with possession, to the opponent under a bond, dated 27th October, 1875, for Rs. 5,100; alleging that they had received Rs. 3,001 only; and that the mortgage had been liquidated out of the rents and profits of the said village.

The opponent contended that the applicants had property other than that admitted by them; and that they had rendered themselves incapable of suing as paupers, by entering into an agreement with their vakil to pay him a sum of Rs. 1,500 out of the property in dispute, in contravention of section 407 (d) of the Code of Civil Procedure.

The question for decision was, whether the application to sue as a pauper should be rejected, under section 407 (d), Code of Civil Procedure, by reason of the agreement entered into by the applicants with their vakil.

The material part of the agreement was as follows:—“We have filed a suit against Lakshman Mahádev to redeem our

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jághir village of Karhe Takli, and appointed you our vakíl to conduct it. We have agreed to give you a lump sum of Rs. 1,500 as remuneration for your services as vakíl. As soon as this case is decided, we shall either of us, from whomsoever you demand your fee as vakíl, the Rs. 1,500, pay the same, without waiting for the presence of the other (*i. e.*, jointly and severally). We shall pay the Rs. 1,500 as soon as the suit is decided, whether amicably or in any other manner. We shall make no excuse. If we both fail to pay the money, you may recover the same from the revenues of the above said *jághir* village of Karhe Takli. As we are unable to give the above mentioned amount in cash, we have this day passed you this agreement."

It was contended by the applicants' vakíl that the word "interest" in clause (d), section 407, Code of Civil Procedure, meant such a vested and completed interest as that the person who obtained it should be made a party to the suit from the commencement.

The opinion of the First Class Subordinate Judge at Ahmednagar was that the application should be rejected, as the language of clause (d) of section 407 appeared to him sufficiently wide to include the present case.

No one appeared in the High Court on behalf of any party.

SARGENT, C J.—We concur in the opinion of the Subordinate Judge.

Answer accordingly.