

A special appeal lies, on the principle laid down in the case of *Dikshīt v. Dikshīt (a)*; and we reverse the decree, and remand the case that the issues indicated may be decided. Costs to follow the final decision.

1868.  
KISANDRA'M  
HIRA'CHAND  
v.  
JETHIRA'M  
MAGNIRA'M.

*Suit remanded.*

(a) 2 Bom. H. C. Rep. 4.

*Civil Petition.*

April 8.

DIPSANGJI JITSANGJI ..... *Petitioner.*  
FATTESANGJI JASVATSANGJI ..... *Opponent.*

*Pauper Suit—Inquiry—Civil Proc. Code, Secs. 305, 306.*

When a pauper petition comes on for hearing, under Sec. 306 of the Code of Civil Procedure, the Judge has no power to inquire into any other circumstance than the pauperism of the petitioner.

THIS was an application to the Court, in the exercise of its extraordinary jurisdiction, under Cl. 2 of Sec. v. of Reg. II. of 1827.

The petitioner, Dipsangji, applied for permission to file a suit *in formá pauperis* against Fattesangji Jasvatsangji in the court of the Principal Şadr Amín of Súrat, to establish his right to succeed to the principality of Ahmod, and to recover arrears of revenue &c. due to him, on the ground of his being the son of the late Jitsangji, and as such entitled to the property left by him.

The Principal Şadr Amín, after examining the application and the petitioner, fixed the 17th of December 1867 for receiving such evidence as the petitioner might adduce in proof of his pauperism, and for hearing any evidence which the defendant might wish to bring forward in disproof of it, and served a notice upon the defendant to that effect. The notice further stated that the court had seen no reason to refuse the application.

The defendant accordingly appeared, and prayed the Principal Şadr Amín to reject the petition, on the ground that the petitioner had no cause of action, as his claim was barred

*see in R  
of hidrawa  
Bansapa  
28/4/70  
Kut...  
14 W. R. 281*

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by previous orders or decisions of the late Judge of Súrat, as well as of the Şadr Fouzdári Adálat, which declared the petitioner to be a spurious Dipsang. The petitioner contended that, at the then stage of the proceedings, an inquiry into his pauperism only could be made; and that the court could not enter into the merits of the case.

The Principal Şadr Amín, however, observed that though Sec. 305 directed a notice to be issued to the defendant, requiring him to appear and produce evidence in disproof of the pauperism of the petitioner, yet the following section (306) enjoined the court to consider *any* objections made by the opposite party, and that, taking both the sections together, it was clear that, besides the evidence in disproof of the petitioner's pauperism, the opposite party was at liberty to raise any other objections he might have to urge.

Under this view of the law, the Principal Şadr Amín went into the objections raised by the defendant, and rejected the application for permission to sue *in formá pauperis*, on the grounds that it had been found by the Civil (a) and Criminal Courts that the petitioner was a spurious Dipsang, and that the real Dipsang had died in 1850-51, and that a previous application which the petitioner had made, for permission to sue *in formá pauperis* against the defendant and the Government of Bombay, had also been rejected.

Against the order of the Principal Şadr Amín, rejecting his petition to sue *in formá pauperis*, the petitioner made the present application.

The case was argued before NEWTON, Acting C.J., and TUCKER, J.

Marriott (with him *Dhirañlál Mathurádás*), for the petitioner:—Upon an inquiry into the pauperism of the petitioner, it was not competent for the court below to go into the other objections raised by the defendant. The words "*any objections*" in Sec. 306 of the Code of Civil Procedure, which have been much relied upon by the Principal Şadr Amín as giving him power to go into the merits of the case, must

be read in connection with the previous section (305), which confines their meaning. The Calcutta High Court have ruled that when a case comes on for hearing under Sec. 306, the Judge has no power to inquire into any other circumstance than the pauperism of the petitioner: *Shaponessa Bibee v. Kaminee Bibee (b)*. The Principal Sadr Amín has alluded to an application made for permission to sue *in formá pauperis*; but that was a suit against Government and other parties, and the Judge, finding that the suit would not lie against Government, rejected the application.

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*Nánabhái Hariddás*, for the opponent:—If the defendant can urge any defence which, without requiring an investigation into the merits of the case, deprives the petitioner of his right of action, such as a plea of limitation or a former judgment, he ought to bring it forward at the earliest opportunity. To admit of such an inquiry as this, the words “any objections” are used in Sec. 306. The petitioner, as the lower court has found, is barred by reason of certain criminal proceedings taken against certain persons who set up the petitioner as Dipsang, and who were convicted of conspiracy.

[TUCKER, J.:—The criminal case is not binding on the petitioner. He was then an infant. He is now of age, and alleges that he is the real Dipsang; and he may be able to prove it in a civil case. We have to see whether he has a case *primá facie*; and his pauperism is the principal question. I recollect a case in which the defendant, before the registration of the plaint, wanted to appear and urge that the plaintiff was barred; but Mr. Justice Westropp held that the defendant could not be heard, under Sec. 32 of the Code of Civil Procedure.]

*Marriott*:—The Principal Sadr Amín having sanctioned the prosecution of the petitioner for false personification, in having stated in his petition that he was the real Dipsang, and the witnesses called by him to prove his pauperism being charged with aiding and abetting, I ask for an order to stay the proceedings.

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PER CURIAM :—Chap. V. of the Code of Civil Procedure lays down particular stages of inquiry in cases of pauper suits: By Secs. 303 and 304, the first two questions which the court itself is required to dispose of summarily are—whether the suit is barred or not; and whether the allegations in the petition constitute a sufficient cause of action: and on the determination of these questions follows the notice to the opposite party to produce his evidence in disproof of pauperism. It is for the court to determine, from the statements in the plaint and the examination of the petitioner, whether he has a cause of action; and there is no provision under which the opposite party can be heard at this stage of the case, or on this question. Subsequently he receives notice, under Sec. 305, of a day fixed for the further hearing of the case, but the inquiry is then limited to the reception and consideration of such evidence as the petitioner may adduce in proof of his pauperism, and of any evidence which the opposite party may bring forward in disproof of the pauperism of the petitioner. The words “any objections” are indeed used in Sec. 306, but they cannot be read as intended to extend the limits of inquiry expressly laid down in Sec. 305.

A precedent of the High Court of Calcutta has been quoted to us, and it agrees with the conclusion to which we have been led, namely, that when the case comes on for hearing, under Sec. 306, the Judge has no power to inquire into any other circumstance than the pauperism of the petitioner. We, therefore, reverse the order of the Principal Sadr Amín, and remand the case that he may, as required by law, inquire into the pauperism of the applicant, and, if this be established, further proceed with the trial of the suit according to law. We further cancel the order of the Principal Sadr Amín sanctioning a criminal prosecution, with an intimation that the Principal Sadr Amín will be at liberty to reconsider the propriety of making a new order of this character after finally disposing of the suit, if he then thinks that the circumstances disclosed require further action on his part.

The applicant to be allowed costs.