

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánábhái Haridás.
 REVJI PATIL (ORIGINAL PLAINTIFF), APPELLANT, v. SAKHA'RA'M
 (ORIGINAL DEFENDANT), RESPONDENT.*

1884
 July 28.

Practice—Civil Procedure Code (Act XIV of 1882, Sec. 401—Suit in formá pauperis—Continuation in formá pauperis of suit instituted in ordinary form.

It is competent for the Court to allow a suit not originally instituted in *formá pauperis* to be continued in *formá pauperis*.

Nirmul Chandra v. Doyál Náth(1) followed.

THIS was an appeal from the decision of Ráv Bahádur N. M. Thosar, First Class Subordinate Judge at Násik.

The plaintiff brought this suit against the defendant in the Subordinate Judge's Court at Násik.

On presentation of the plaint it appeared that the plaint was not properly stamped. The plaintiff was, therefore, given time to supply the proper stamp, but he failed to do so, and prayed that he might be allowed to prosecute the suit in *formá pauperis*. The Subordinate Judge was of opinion that he had no power to grant the prayer of the plaintiff, and, therefore, rejected it.

The plaintiff appealed to the High Court.

Gangáram B. Rele for the appellant.—The suit was brought in the ordinary way, but subsequently the circumstances of the appellant changed, and rendered him unable to proceed with it. Section 401 of the Civil Procedure Code (XIV of 1882) empowers the Court to allow a person to sue as a pauper: *a fortiori*, it must allow a person to continue in *formá pauperis* a suit commenced in the usual way.—*Nirmul Chandra v. Doyál Náth*(1). The appellant should be allowed to continue the suit in *formá pauperis*.

No one appeared for the respondent.

WEST, J.—The Court may allow a suit to be continued as well it may allow one to be brought originally in *formá pauperis*. It is not unusual for a man who begins a suit quite solvent to be reduced to insolvency before it is finished, and exactly the same considerations apply to the case of a plaintiff who becomes a pauper in the course of the litigation as to one who begins it as a pauper. Following the case of *Nirmul Chandra Mookeree v. Doyál Náth*

* Appeal No, 32 of 1883.

(1) I. L. R., 2 Cal., 130.

1884
 REVJI PATIL
 v.
 SAKHARÁM. *Bhuttacharjee*⁽¹⁾ therefore, we reverse the decree of the Subordinate Judge, and direct that he investigate the alleged pauperism, and proceed thereafter according to the result of the investigation. Costs to follow the final decision.

Decree reversed.

(1) I. L. R., 2 Cal., 130.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nánabhái Haridás.

July 28.

KHA'DAR SA'HEB AND OTHERS, APPELLANTS, v. CHOTIBIBI, RESPONDENT.*

Civil Procedure Code (Act XIV of 1882), Secs. 32, 45 and 46—Adding parties—Striking off parties—Causes of action, joinder or severance of—Non-joinder or misjoinder of parties—Practice—Procedure.

C. sued P. to recover possession of certain lands. The plaintiff and defendant were members of the same family, and at the hearing of the suit the appellants, who were also members of the family, applied to be made parties, alleging that the suit was collusive, and that they were in possession of some of the lands which the plaintiff sought to recover, and wished to defend their possession. The Subordinate Judge granted their application, and made them co-defendants in the suit. They filed written statements setting forth their right, and time was allowed in order that the plaintiff might put in a counter statement. Before the case came on again, the Subordinate Judge had been removed, and his successor was of opinion that the causes of action, as against the original defendant P. and as against the new defendants (the appellants), were different, and ought to be the subject of different suits. He accordingly dismissed the appellants from the suit under section 45 of the Civil Procedure Code (XIV of 1882), and ordered that they should bear their own costs.

Held, on appeal to the High Court, that the order dismissing the appellants from the suit should be reversed, and that section 45 did not apply. When the parties concerned, though in different relation, in a particular litigation are all before the Court, and their cases have been stated, the Court, if it finds the several causes as between plaintiff and the several defendants cannot properly or conveniently be tried together, should deal with them separately as subsuits under the title and number of the principal suit from which they spring. The dismissal of defendants added without objection, or the addition of whom has been submitted to, is not contemplated, and would tend to further needless expense.

The power given by section 45 does not extend to an order for the dismissal of defendants, and that a fresh suit should be brought against them. Such an order would not be one for the "separate disposal" of the several causes of action; it would be an order preventing the disposal of them in the suit before the Court.

Section 45 is meant to apply to cases in which questions arise as to the joinder or severance of several causes of action against the same defendant. For non-

* Appeal No. 31 of 1883.