

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Parsons.

1895.
April 9.

KESHAV RA'MCHANDRA DESHPANDE (ORIGINAL PLAINTIFF), APPELLANT, v. KRISHNARAO VENKATESH INAMDAR (ORIGINAL DEFENDANT), RESPONDENT.*

Pauper—Application for leave to sue as pauper—Rejection of application—Extension of time granted for payment of Court-fees—Payment of fees after period of limitation for suit has expired—Limitation Act (XV of 1877), Sec. 4—Practice—Civil Procedure Code (Act XIV of 1882), Secs. 409 and 413.

On the 2nd February, 1890, the plaintiffs applied for leave to sue in *forma pauperis*. After investigation the Court on the 15th July, 1890, refused leave, but on the plaintiff's application granted him time to pay the Court-fees. He paid the fees on the 12th August, 1890. At this date the suit was barred, and the defendant pleaded limitation. The plaintiff contended that the suit should be taken as instituted at the date of his application for leave to sue as a pauper. The lower Court held the suit barred, and dismissed it.

Held, confirming the decree, that the plaintiff's application to sue as a pauper having been disposed of under section 409 of the Civil Procedure Code (Act XIV of 1882) there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of an application for leave to sue as a pauper the only course open to the applicant is that declared in section 413, *viz.* to institute a suit, and the date of the institution of that suit for the purposes of limitation is the actual date thereof. The plaintiff could not then be regarded as a pauper, and section 4 of the Limitation Act (XV of 1877) would have no application.

SECOND appeal from the decision of C. G. W. Macpherson, District Judge of Belgaum, reversing the decree of Rao Sahib R. G. Bhadbhade, Subordinate Judge of Chikodi.

Suit to recover possession of lands.

On the 2nd January, 1890, being the day on which the Court re-opened after the Christmas vacation, the plaintiffs applied for leave to bring a suit in *forma pauperis* against the defendant to recover land of which the defendant had been in possession since the 27th December, 1877.

After inquiry the Court found that the plaintiffs were not paupers, and on the 15th July, 1890, refused their application. The plaintiffs there and then applied to have further time allowed

* Second Appeal, No. 681 of 1893.

them to pay the Court-fees. The Court granted them further time, and they paid the Court-fees on the 12th August, 1890.

The defendant pleaded (*inter alia*) that the suit was barred by limitation, not having been filed until the 12th August, 1890 (*i.e.* the day on which the fees were paid), which was after the expiration of twelve years from the date of the defendant's getting possession of the land sued for. He contended that the date of the application to sue as a pauper could not be taken as the date of suit under section 4 of the Limitation Act (XV of 1877), as that application had been refused.

The Subordinate Judge overruled the defendant's contention, and held that the suit should be regarded as filed on the 2nd January, 1890. He heard the suit and allowed the claim.

On appeal by the defendant the Judge held the claim to be time-barred, and reversed the decree.

Keshavnáo Rámchandra Deshpánde, one of the plaintiffs, preferred a second appeal.

Mahádeo-B. Chaulal for the appellant (plaintiff):—The point is whether for the purpose of limitation the time is to be calculated up to the date on which the application to sue in *formá pauperis* was made in cases in which the application is refused.

We made the application for time immediately after the Subordinate Judge refused to give us permission to sue in *formá pauperis*. The Privy Council has ruled in *Skinner v. Orde*⁽¹⁾ that the provisions of the Civil Procedure Code relating to pauperism should not be very strictly enforced. The Code lays down that the application for permission to sue as a pauper should be numbered and registered as a suit after it is granted, but in the Privy Council case the application was not numbered and registered as a suit.

[SARGENT, C. J. :—In that case the application was not dismissed.]

There is nothing in the present case to show that our application was rejected under section 409 of the Civil Procedure Code (Act XIV of 1882).

(1) I. L. R., 2 All., 241.

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Dhondu P. Kirloskar for the respondent (defendant) was not called upon.

PARSONS, J.:—The case of *Skinner v. Orde*⁽¹⁾, which is so much relied on by the appellant, is an authority only for the proposition that if during the hearing of an application to be allowed to sue as a pauper the full amount of Court-fees is paid, the application should be considered as a plaint, and the time of institution of the suit taken for purposes of limitation to be the time when the application was made. It has no bearing upon the present case, where it was after his application to be allowed to sue as a pauper had been rejected, and the Court had refused to allow him to sue as a pauper, that the applicant asked for time within which to pay the full amount of Court-fees, and contended that he was entitled on such payment to count the date of his application for leave to sue as a pauper as the date of the institution of his suit. We think that he could not do this. His application to sue as a pauper had been disposed of under section 409 of the Civil Procedure Code (Act XIV of 1882), and there was no proceeding pending which could be continued and kept alive by the payment of Court-fees. On the rejection of the application, the only course open to the applicant is that declared in section 413, *viz.*, to institute a suit, and the date of the institution of that suit for purposes of limitation would be the actual date thereof. The plaintiff could not then be regarded as a pauper, and the provisions of section 4 of the Limitation Act (XV of 1877) relating to paupers would have no application. We agree in this with the decision of the Calcutta Court—*Chunder Mohun Roy v. Bhubon Mohini Dabee*⁽²⁾. We confirm the decree with costs.

Decree confirmed.

(1) I. L. R., 2 All., 241.

(2) I. L. R., 2 Calc., 389.