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estate to which he has acquired a full title. This counteracts the rule laid down in *Gokaldas Gopaldas* v. *Puranmal Premsukhdas*,[1] and I think the learned Chief Justice was right in holding that in this case there had been a merger.

On the other points I agree with what my learned Brother has said and concur in the proposed order.

Decree confirmed.

J. G. R.

[1] (1884) 10 Cal. 1035 at p. 1046.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Coyajee.

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March 6.

SHANKARBHAT BALAMBHAT KANITKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* SAKHARAMBHAT HARBHAT KANITKAR AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

Civil Procedure Code (Act V of 1908), Order XXXIII, Rule 9—Pauper suit—Concealment of property—Dispaupering the plaintiff.

In an *ex parte* proceeding, the plaintiff was permitted to file a suit *in forma pauperis* for a claim which required a Court-fee of over Rs. 500. It was then discovered that the plaintiff had failed to bring to the notice of the Court his life-policy valued at Rs. 245. The plaintiff was dispaupered and called upon to pay the Court-fees. For failure to pay the amount, the suit was dismissed. The plaintiff having appealed,

Held, reversing the order and restoring the suit, that the facts in the present case demanded a further scrutiny by the Court to ascertain whether the plaintiff had means so that he ought not to be allowed to continue the suit as a pauper.

FIRST appeal from the decision of E. F. Rego, First Class Subordinate Judge at Poona.

Suit for partition.

The plaintiff applied for leave to file the suit *in forma pauperis* ; the Court-fee payable on the claim was Rs. 535. At the inquiry into pauperism, the

* First Appeal No. 197 of 1921.

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Government Pleader, though served, was not present. The defendants applied for time which was not granted, and the inquiry proceeded *ex parte* with the result that the plaintiff was allowed to sue as a pauper.

It then transpired that the plaintiff had failed to disclose to the Court his life-policy, the present value of which was Rs. 245. The Court, thereupon, dispaupered the plaintiff; demanded payment of Court-fees; and subsequently dismissed the suit for non-payment thereof.

The plaintiff appealed to the High Court.

The appeal was admitted *in forma pauperis* by Shah J., for the following reasons:

SHAH, J.:—This is an application for leave to appeal as a pauper. The circumstances leading to this application are these. The applicant who was the plaintiff in the Court below, was found to be a pauper and was allowed to prosecute the suit as a pauper. During the pendency of the suit it was brought to the notice of the Court by the defendants that he had omitted to bring to the notice of the Court in his application to be allowed to sue as a pauper, that he had a Life Assurance Policy of Rs. 1,000 which was to become payable in 1928. The petitioner offered the explanation that, as he did not realise that it was property within the meaning of Order XXXIII, Rule 2, he omitted to mention it. The lower Court, under Order XXXIII, Rule 9 (*a*), ordered the plaintiff to be dispaupered, holding it was improper conduct in the course of the suit. The Court then directed the plaintiff to pay the necessary Court-fees. The amount of the Court-fees payable in the case was Rs. 535. The plaintiff was unable to pay the amount, and accordingly the suit was dismissed.

An appeal is preferred from that decree to this Court and an application is made along with the memorandum of appeal that he should be allowed to appeal as a pauper. Apart from this omission on the part of plaintiff to refer to this Life Assurance Policy, it was found by the lower Court that he was a pauper. The question whether the omission to mention his policy in the list of property which belonged to him at the date of his application to the lower Court was sufficient under the circumstances to justify an order dispaupering the plaintiff will be a point to be considered in the appeal. I do not desire at this stage to express any opinion on that question. But it is obvious that, for the purposes of this application, if that point is taken to be a point which requires to be considered in appeal there is no reason to doubt that the applicant is a pauper apart from that property to which of course a reference is now made. The present money value of the Policy, such as the applicant holds, is said to be about Rs. 250. But whatever the present money value of that might be, I am of opinion that apart from the policy, the applicant is unable to pay the Court-fees payable on the memorandum of appeal; and as the money under the Policy has not become due, for the purposes of this application I think it should be left out of account. I may also add that even taking the present money value of the Policy into consideration, that would not be sufficient to enable the appellant to pay the amount of the Court-fees payable in this Court on the appeal. I allow this application, and also direct notice to issue in the appeal, subject to any office objections.

The appeal was heard by Macleod C. J. and Coyajee J.

S. Y. Abhyankar, for the appellant.

K. V. Joshi, for the respondents.

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MACLEOD, C. J. :—The plaintiff applied to the First Class Subordinate Judge to file a suit *in forma pauperis*. Notice was issued to the Government Pleader who did not appear, and to the opponents who asked for time. The Judge saw no reason to grant further time, and decided in favour of the applicant *ex parte*, the Judge being satisfied that he was a pauper and unable to pay the requisite Court-fee stamp on the plaint. That order was made on the 6th November 1920.

On the 8th April 1921, an application was made, the exact nature of which is not quite clear from the record. But it was refused by the Judge on the ground that the plaintiff had been guilty of fraud from the beginning. The same day the Judge held the plaintiff to be dispaupered and the suit was dismissed. The Roznama is not very clear as printed at p. 1, because it will be seen that the defendant applied that the plaintiff be dispaupered since he held a life-policy. Accordingly he was dispaupered and ordered to pay Court-fee by a fixed date. He did not pay it on the date fixed and took further time. On the 8th April he said he could not pay the Court-fees because his Policy was valued at only Rs. 245. The Judge held that his conduct had been improper and so he should be dispaupered, and as he was not going to pay Court-fees his suit was dismissed.

Now it is quite true that the plaintiff did not mention the fact, when he applied for leave to file a suit *in forma pauperis*, that he held a life-policy. That was an endowment Policy for Rs. 1,000, which would only be paid at the end of the endowment period, provided the premia were duly paid, and it is quite possible that the plaintiff never considered the Policy as a present asset, or that it had a surrender value, so that we hardly think that the Court would be justified in saying that he had

been guilty of gross fraud on the Court by concealing the Policy. The only result would be, when the fact that the plaintiff had that Policy came to the notice of the Court, that it would consider whether by surrendering the Policy the plaintiff could raise sufficient money to pay the Court-fee. It is admitted that even if he surrendered his Policy he could not pay the Court-fee which would amount to over Rs. 500.

The result is that on the merits the Judge took too severe a view of the plaintiff's conduct. Order XXXIII, Rule 9, directs that the Court may order the plaintiff to be dispaupered if he is guilty of vexatious or improper conduct in the course of the suit or if it appears that his means are such that he ought not to continue to sue as a pauper. Even assuming that concealment of property might in a particular case amount to improper conduct, which by itself would entitle the Court to dispauper a plaintiff, the fact which came to light in this case only demanded a further scrutiny by the Court to ascertain whether the plaintiff had means, so that he ought not to be allowed to continue the suit as a pauper. If that scrutiny had been made, it would have been discovered that the plaintiff was still unable to pay the Court-fees. The respondent, however, objects that it is not competent to this Court to deal with the order of the First Class Subordinate Judge dismissing the suit. It would be open, we presume, to the plaintiff to file another suit tomorrow and apply to the Court for leave to prosecute that suit *in forma pauperis* and the previous proceedings would not bar such an application, nor would the Court be entitled to take into consideration the plaintiff's conduct in those proceedings.

It would seem, therefore, to disallow the appeal on the ground set forward by the respondent, would not in any way assist him, and even assuming that the

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point is a good one, we could deal with the matter either in revision or under section 151 of the Civil Procedure Code. We think this is clearly a case in which the plaintiff should not be debarred from continuing the suit. We set aside the order dismissing the suit and direct that the plaintiff be allowed to continue the suit *in forma pauperis*. All costs will be costs in the case.

Order set aside.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr Justice Coyajee.

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March 6.

GANGARAM BHIKU MAHADIK AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3), APPELLANTS *v.* SHRIMANT SARDAR BAPUSAHEB ALIAS KRISHNARAO DAULATRAO MAHADIK AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT NO. 1), RESPONDENTS*.

Ejectment—Property owned by Hindu co-parceners—Rent note in favour of a co-parcener—Suit by that member alone—Non-joinder, effect of.

The plaintiff Krishnarao and his cousins jointly owned the property in suit. The property was leased to defendants who had signed rent notes in favour of the plaintiff. The plaintiff having sued to recover possession, the defendants contended that the suit was bad for non-joinder of plaintiff's cousins.

Held, over-ruling the contention, that the fact that the rent notes were signed in favour of the plaintiff would by itself entitle the plaintiff to sue for possession as the defendants refused to comply with the terms of the rent notes and that the non-joinder could not in any way prejudice the defendants as they would not be liable to have any demand made upon them for rent by plaintiff's cousins.

Bando v. *Jambu*[1]; *Gurushantappa* v. *Chanmallappa*[2]; and *Sayad Fatulla valad Sayad Kamlodin* v. *Bola bin Shivaya Gavda*[3] referred to.

Balkrishna v. *Moro*[4], distinguished.

* First Appeal No. 95 of 1921.

(1) (1910) 12 Bom. L. R. 801.
(2) (1899) 24 Bom. 123.
(3) (1884) P. J. 33.
(4) (1896) 21 Bom. 154.