

**Bai Sakri Vs. Bai Dhani**

**Bai Sakri Vs. Bai Dhani**

**SooperKanoon Citation :** [sooperkanoon.com/342005](http://sooperkanoon.com/342005)

**Court :** Mumbai

**Decided On :** Nov-20-1946

**Reported in :** (1947)49BOMLR762

**Judge :** Macklin and Gajendragadkar, JJ.

**Appeal No. :** Letters Patent Appeal No. 30 of 1944

**Appellant :** Bai Sakri

**Respondent :** Bai Dhani

**Judgement :**

**Macklin, J.**

1. This is an appeal under the Letters Patent against a decision of Mr. Justice Weston holding that a receiver should be appointed pending the decision of an application for leave to sue as a pauper. Two points are taken by the appellant, who objects to the appointment of a receiver. The first is that a receiver can be appointed only when a plaint is before the Court, and the filing of a pauper application accompanied by a plaint is not the same thing as filing a suit. The second point is that, assuming it is not necessary for a suit to be before the Court, there must at any rate be some proceeding before the Court; and what is before the Court is not such a proceeding as is contemplated by Order XL, Rule 1.

2. As to the first contention, it is to be noted that the present form of Order XL, Rule 1, differs from the older Section 503 in that the words 'Where it appears to the Court to be just and convenient' have been substituted for the words 'Where it appears to the Court to be necessary for the realisation, preservation or better custody, or management of property, moveable or immoveable, the subject of a suit or attachment. 'It was however decided in an unreported case before this Court, *Bai Chanchal v. Dalpatram Premchand* (1935) A.O. No. 31 of 1933, decided by Barlee and N.J. Wadia JJ., on September 16, 1935 (Unrep.), that an application to sue as a pauper accompanied by a plaint did not in itself amount to a plaint. On the other hand it was decided in *Totaram Ishharam v. Dattu Mangu* (1942) 45 Bom. L.R. 231 that an application to sue as a pauper accompanied by a plaint did amount to filing a plaint in a suit, and it was pointed out not only that the decision of the Privy Council in *Skinner v. Orde* made that position fairly certain but also that the filing of an application in the form of a plaint which is taken on the file as a plaint commences the suit, and it would be a strange thing if a plaintiff who desired leave to sue as a pauper could not apply to prevent the defendant from making away with the property in suit until his application for leave had been disposed of. It is however not necessary for us to decide between these conflicting views, as we propose to decide the matter on the second point raised. We may however indicate a strong preference for the view put forward by Beaumont C.J. in *Totaram's* case.

3. Coming to the second point, the omission of the words 'the subject of a suit or attachment' leaves the rule in extremely general terms, and so far as Sub-rule (1) is concerned, there is nothing whatever in the rule to suggest that a receiver could not be appointed in any proceeding that was before the Court. It is of course necessary that there should be some proceeding before the Court and a person who has no other business in the Court at all cannot come to the Court and ask the Court to appoint a receiver and then go away. But so far as Sub-rule (1) is concerned, there is nothing to suggest that an application to sue as a pauper is not the sort of proceeding in which a receiver could be appointed. It is true that Sub-rule (2) refers to parties to the suit, but we do not think that these words in Sub-rule (2) can be allowed to control the general terms of Sub-rule (1) in view of the fact that there has been a deliberate amendment of the old rule and the principal

part of the amendment was to omit the only words which would limit the proceedings before the Court to suits or attachments. It is true that there are authorities saying that certain classes of proceedings, for example proceedings under the Succession Certificate Act or for the removal of a trustee under the Trusts Act, are not such proceedings as are contemplated by Order XL, Rule 1, but in so far as those decisions may proceed upon the basis that Order XL, Rule 1, limits the classes of proceedings in which receivers may be appointed, we respectfully dissent. A discussion of the matter will be found at page 1139 of Sir Dinshah Mulla's Civil Procedure Code, 11th edition, and it seems clear that the learned author's own opinion is that Order XL, Rule 1, applies to proceedings in general. It is suggested to us that this is a substantive relief-which is undoubtedly correct-and that in a Code of Procedure it should be given in clear terms and not as it has been given in O. XL, Rule 1. But we see no reason to think that Order XL, Rule 1, is in any way obscure. We think that it clearly applies to all proceedings in which the appointment of a receiver is just and convenient, and on that ground we dismiss this appeal with costs.

4. The record should go back to the trial Court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**