

**Narayan Dutt and anr. Vs. Smt. Mohani Devi and anr.**

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**Court :** Rajasthan

**Decided On :** Jul-16-1964

**Reported in :** AIR1964Raj279

**Judge :** Jagat Narayan, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 26 - Order 33 - Order 39

**Appeal No. :** Civil Revn. No. 219 of 1964

**Appellant :** Narayan Dutt and anr.

**Respondent :** Smt. Mohani Devi and anr.

**Advocate for Def. :** M.C. Bhandari, Adv.

**Advocate for Pet/Ap. :** Ranjit Mal, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**Jagat Narayan, J.**

1. This is a revision application by Narayan Dutt and Krishna Dutt against an order of the District Judge, Pali.

2. The applicants presented a pauper application before the District Judge on 2-5-64 and along with that application filed another application praying for an injunction against the respondents Smt. Mohani Devi and Shivdutt. The application for injunction was dismissed on the ground that it could not be granted till the suit was registered after the disposal of the pauper application.

3. On behalf of the applicants it is asserted that the view taken by the learned District Judge is erroneous. Reliance is placed on the Full Bench decision of the Patna High Court in *Matuki Mistry v. Kamakhya Prasad*, AIR 1958 Pat 264 (FB). A contrary view was taken in *Thimmayya v. Sadasivappa*, AIR 1952 Mys 76 and *Purna Chandra v. Tara Prasad*, AIR 1917 Cal 852. The majority of the High Courts have however taken the view which was taken by the learned Judge of the Patna High Court in the above Full Bench case. I respectfully agree with this view.

4. An order of injunction under the provisions of Order 39 has to be made in a suit. Before such order for injunction can, therefore, be passed, the suit must have commenced, or, in other words, must have been instituted. Ordinarily, as provided in Order 4, Rule 1 of the Code of Civil Procedure, a suit is instituted by presentation of a plaint. But that is not the only mode of the institution of a suit. Section 26 of that Code provides that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed. Order 33 prescribes the mode for institution of a suit by a pauper and Rule 1 of that Order says that subject to the other provisions of that Order, any suit may be instituted by a pauper. Rule 2 of that Order prescribes as to how that suit by a pauper is to be instituted and enacts that an application should be made for permission to sue as a pauper which must contain the particulars required in regard to plaintiffs in suits, a schedule of any movable or immovable property belonging to the applicant with the estimated value thereof and it has to be signed and verified in the manner prescribed for the signing and verification of pleadings. Order 33, thus prescribes the mode for institution of a suit by a pauper as contemplated by the words 'in such other manner as may be prescribed' used in Section 26 of the Code of Civil Procedure. The suit, therefore, is instituted or commences from the moment the application for permission to sue in forma pauperis as required by Order 33 is presented. The Calcutta High Court has since held in *Manorama Dasi v. Sabita*

Dasi, AIR 1951 Cal 357 that pending the decision of a pauper application the Court has inherent power to pass an order of injunction.

5. I accordingly allow the revision application and set aside the order of the learned District Judge. The case is remanded to him for decision in accordance with law. He shall consider all the objections which the opposite parties may file after notice of the application for injunction is issued to them. I direct that parties shall bear their own costs of this revision application.

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