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Court : Chennai

Decided On : Jun-14-1972

Reported in : AIR1973Mad230

Judge : K. Veeraswami, C.J. and ;Raghavan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Sections 115 - Order XXXIII, Rule 5 and 7

Appeal No. : Civil Revn. Petn. No. 1047 of 1970

Appellant : Muthammal

Respondent : K. Jagadeesa Mudaliar and ors.

Judgement :

1. The matter has been placed before us, as a question of procedure arises. The petitioner had applied for leave to sue in forma pauperis which was not granted. The Court below allowed time for payment of court-fee. But it was not paid. The petition is to revise the order of the Court below declining leave to sue in forma pauperis. As objection seems to have been taken on behalf of the respondents that only an appeal would lie. Kailasam, J. considered this and was of the view that only a revision would lie. He, however, felt that as Bommisetty Ramayamma In re, took a different view the question may be settled by a Division Bench.

2. We are clearly of the view that the only remedy, if at all open to the petitioner, is by way of revision under Section 115, Civil P. C. Refusal of leave to sue in forma pauperis is but an order not having the force of a decree. Unless an appeal is specifically provided for from an order the only remedy is by way of revision. Appeal has been provided for only if an application for leave to sue in forma pauperis was refused on the ground that the plaint disclosed no cause of action or that it was barred by limitation-Vide Order XXXIII, Rule 5(d) and (d-1) as well as Rule 7 of the Code. Merely because while declining leave the Court gave time that would not have the effect of converting the application for leave to sue in forma pauperis into one of an order on plaint so as to consider it as a case of an order rejecting the plaint. A contrary view expressed in as we think is not correct. The preliminary objection is, therefore, rejected.

3. On the merits, we are inclined to think that the matter should go back to the Court below for fresh disposal of the application for leave to sue in forma pauperis. It is true, that on the date the Court below disposed of the application, the petitioner was possessed of some property. It appears that the property was subject to a mortgage on the basis of which a decree was obtained and it was brought to sale. The Court below went upon the basis that so long as the petitioner happened to be in possession. But it is stated that the property had been sold and the petitioner was deprived of possession of the property. That fact was not before the Court below. Although time for payment of court-fee expired, we consider that in the interests of justice the question whether the petitioner at that moment was a pauper or not should be approached on the merits. On that view of the matter the revision is allowed and the matter is remitted for disposal of the application afresh in the light of the evidence, if any, to be adduced. No costs.

4. Revision allowed.

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