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**(1960) 01 AHC CK 0012**

**Allahabad High Court**

**Case No:** Civil Revision No. 980 of 1954

Chhail Behari Lal and Others

APPELLANT

Vs

Phool Chand and Others

RESPONDENT

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**Date of Decision:** Jan. 22, 1960

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 33 Rule 7

**Citation:** AIR 1961 All 308

**Hon'ble Judges:** S.S. Dhavan, J

**Bench:** Single Bench

**Advocate:** D. Sanyal and V.K. Gupta, for the Appellant; A.P. Gupta, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

S.S. Dhavan, J.

This is a plaintiff's application u/s 115, C. P. C. against an order of the learned Civil Judge, Aligarh rejecting their application to sue in forma pauperis. The plaintiffs filed a suit for a declaration that certain mortgage deeds executed by their ancestors were not for legal necessity and invalid and also for cancellation of the decrees obtained by the defendants on the basis of the impugned mortgages. There was also a prayer for an injunction restraining the defendants from taking possession of the plaintiff's property.

The plaintiffs made an application, under Order 33, Rule 1, C. P. C., for permission to institute the suit as paupers. They alleged that they were not possessed of sufficient means to enable them to pay the prescribed court-fee. Notice was issued to the Government Pleader and to the defendants. After hearing the evidence of the plaintiffs and the first defendant, the learned Civil Judge took the view that the plaintiffs are possessed of sufficient means to pay the court-fee and rejected the application. Aggrieved by this order the plaintiffs have filed this application.

2. I have heard learned counsel for both sides and I am of the opinion that the application should be allowed. The learned Judge has given detailed reasons for disbelieving the plaintiffs. But he appears to have ignored completely the statement made by the Government Pleader on behalf of the State that it did not oppose the plaintiff's allegation of poverty (Muflasi per atraz nahin hai). In my opinion, this was not a correct approach to the question whether the plaintiffs should be allowed to sue as paupers. Under Rule 7 of Order 33, the Court, after hearing the evidence of the parties and hearing their arguments on the question whether the applicant is subject to any prohibitions, has to make its decision whether to allow or refuse to allow an applicant to sue as a pauper.

3. The party vitally concerned in the result of application by the plaintiffs for permission to sue in forma pauperis is the State which stands to lose revenue in the event of permission being granted. It is true that the defendant is also entitled under Order 33, Rule 6 to oppose the application and lead evidence to disprove plaintiffs' allegation of pauperism. But, in the assessment of the evidence, and consideration of the other relevant circumstances, the starting point for the Court should be the statement of the State.

It is well known and was conceded by both counsel that on receiving notice of an application under Order 33, Rule 6, Government initiate an enquiry through the Collector into, the financial condition of the applicant. It was also conceded that the decision not to oppose the application is taken only if the result of the enquiry confirms the plaintiffs allegation that he is a pauper.

It was conceded on behalf of the defendant respondents that if) the present case, too, the routine procedure must have been followed and an enquiry made by the Collector and that the Government Pleader's statement was based on the result of that enquiry. But the learned Judge did not even refer to the statement of the State in his order and ignored it completely. This appears to me an incorrect approach.

4. Ordinarily, a plaintiff, claiming to be a pauper may be inclined to emphasise his poverty and his opponent his alleged affluence. Each party may be tempted to exaggerate things in its self-interest. But the State will not ordinarily make a statement in favour of the plaintiff which will cause it loss of revenue. Therefore, in an application under Order 33. Rule 6, C. P. C., if the Government Pleader makes a statement to the Court in favour of the applicant, the Court must attach the utmost importance to it as emanating from the State in whose interest the Court-fees Act has been enacted, and which makes an enquiry before conceding the pauper's case as it stands to lose revenue if the application is allowed. If the Government's statement is in favour of the pauper it should Ordinarily be accepted by the Court unless the respondent can show fraud or collusion or any other convincing reason why it should be discarded.

5. But the learned Judge, in the present case, completely ignored the statement made on behalf of the State. I am inclined to hold that this is a wrong approach and amounts to a material irregularity in the assessment of evidence. The order of the learned Judge must therefore be set aside. I do not think that it is necessary to remand the case for a fresh decision, as this Court can form its own estimate of the merits of the plaintiffs' claim.

6. I have examined the statement of the parties. It appears to me that the defendant Phool Chand made several statements in the witness box of which he could not possibly have any personal knowledge. These should have been rejected by the learned Judge as hearsay. He also took into account the value of the equity of redemption in respect of the property which is in dispute in the suit itself.

But an asset of this sort is hardly likely to find any purchaser in the market, for no prudent person will purchase it if the transaction is likely to land him in litigation. The learned Judge was also influenced by the defendant's allegation that the plaintiffs' women-folk had jewellery. A woman's ornaments do not necessarily belong to her husband. They may be her stridhan. He has used the adjective "valuable" in this connection.

I do not see how the defendant was in a position to depose from personal knowledge that the jewellery, even if it did exist, was valuable. The learned Judge also relied on a statement by the defendant Phool Chand that the plaintiffs were doing tobacco business which, according to him, is a "flourishing business". This was merely the opinion of an interested party. As evidence of the prosperity of the plaintiffs' business it was pure hearsay and worthless.

7. Taking every aspect of the case into consideration, I am inclined to decide this case according to the statement made on behalf of the Government in support of the plaintiffs' case which prima facie, was based on an impartial enquiry by the Collector into the financial condition of the plaintiffs. Learned counsel for the respondent could not suggest any reason why this statement should not be believed. I, therefore, allow this application and permit the plaintiffs to sue in forma pauperis,.

8. The parties are directed to bear their own costs of this application.