
(1876) 05 AHC CK 0009

Allahabad High Court

Case No: None

Skinner

APPELLANT

Vs

Orde and Others

RESPONDENT

Date of Decision: May 29, 1876

Citation: (1875) ILR (All) 230

Hon'ble Judges: Robert Stuart, C.J; Pearson, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. The cause of action in this suit accrued to the plaintiff in August 1861, when his father died; and the period during which the suit might legally be brought is 12 years. If the suit can be held to have been instituted on the 21st February 1873, the date on which the application for permission to sue in forma pauperis was first presented to the Subordinate Judge of Meerut, it is clearly within time; and there can be no doubt that, had the application of the 21st February 1878, been granted, the suit would rightly be deemed to have been instituted on that date. But that application never was granted, and was indeed virtually withdrawn on the 27th November 1874, by the plaintiff's offer to pay the amount of the fee chargeable on the plaint under the Court Fees Act before the inquiry into his pauperism had been concluded, and his application was not numbered and registered and assumed to be the plaint in the suit under the provisions of Section 308, Act VI of 1809, in consequence of proof of his pauperism, but in consequence of the payment by him of the proper fees. But there is no provision in the law which allows the application presented u/s 299 of the Code to be deemed the plaint in the suit when such application has been in effect revoked and superseded by the payment of the fees chargeable under the Court Fees Act. In such a case; we conceive that the date of the presentation of the plaint and institution of the suit must be taken to be the date of the payment of the fees: and we are therefore unable to rule that the lower Court has erred in declaring the present suit to have been instituted after the lapse of the period allowed by the law. We have no alternative but to dismiss the appeal with costs.