

Mt. Buchan Dai Vs Jugal Kishore

Court: Patna High Court

Date of Decision: April 11, 1924

Judgement

Dawson Miller, C.J.

This application which is an application on behalf of the defendant Musammat Bachan Dal to appeal in forma pauperis

came before the Court on the 13th August last year when the question arising under the proviso to Order 44, rule 1 was apparently discussed and

considered. The learned Judges who heard the application instead of rejecting it as they were entitled to do under Order 44, rule 1, if they had no

reason to think that the decree was contrary to law or otherwise erroneous or unjust, admitted the application, that is to say they said that the

application will be heard and they ordered notices to be served upon the opposite party and the Government Advocate. The object of that was

undoubtedly that an enquiry should be made into the pauperism of the applicant, the Court being satisfied that there was a proper case to present

in appeal. We are therefore not concerned with the question now whether the proviso to Order 44, rule 1 has been complied with; but the only

question is whether the applicant is a pauper or not. According to the petition which is verified by an affidavit the applicant's means consist of

some small articles of furniture and so on the total value of which is Rs. 35.4. In reply to that the opposite party has filed a counter-affidavit saying

that this lady about two years ago sold certain property which was the subject-matter of the present suit for Rs. 5,000 and they ask us to assume

therefore that it is impossible to suppose that she is a pauper at the present day. In reply to that an affidavit is made on behalf of the applicant

admitting that it is quite true that she sold not only this mokarrari property which is in dispute but further that she sold some other property for Rs.

3,000 and this Rs. 3,000 she says she used to pay off the decretal money and debts of her husband now deceased and for other accessory

expenses and that the Rs. 5 000 acquired by the sale of moharrari property in dispute she used for effecting repairs to the temple and that after

paying off the debts and repairs she has no money left.

2. In these circumstances it seems to me. that a case is made out. We are asked, however, to order an enquiry to be made into this lady's

circumstances and to refer the matter for that purpose to the Court below. Even now the learned Vakil for the opposite party is unable to say what

sort of evidence he can adduce, oral or otherwise, to show that this lady has any means. I think that it would be quite useless to order an enquiry.

We have sufficient evidence on the record to enable us to come to a conclusion. In my opinion the application should be acceded to.

3. There will be an order granting the applicant leave to appeal in forma pauperis.

4. The costs of this application will abide the result of the appeal.

Mullick, J.

5. I agree.