

The Indian Law Reports

REVISIONAL CRIMINAL

Before Daya Krishan Mahajan, J.

LT. COL. F. A VON GOLDSTEIN AND ANOTHER,—
Petitioners

versus

NOEL BHAGWAN DAS SAYAL,—*Respondent.*

Civil Revision No. 547 of 1961.

*Code of Civil Procedure (V of 1908)—Order 33, Rule 1—
Defendant making available to the plaintiff the court-fee
amount before the order granting permission to sue in
forma pauperis was passed—Whether disentitles the plain-
tiff to sue in forma pauperis.*

1961
Oct. 11th

*Held, that the volition of the defendant in making the
funds available to the plaintiff for purchase of court-fee is
not relevant in determining whether the plaintiff is or is
not a pauper and does not disentitle him to sue in forma
pauperis.*

*Petition under section 115, of the Civil Procedure Code
and Article 227 of the Constitution of India for revision of
the order of Shri Hazura Singh, Sub-Judge, 1st Class,
Patiala, dated 24th April, 1961, holding that Noel Bhagwan
Dass is entitled to sue in forma pauperis.*

*Application for permission to sue as pauper for the
recovery of Rs. 7,306, as arrears of pay and allowances from
1st September, 1958 to 20th September, 1960.*

R. K. D. BHANDARI, ADVOCATE, for the Petitioner.

C. D. DEWAN, ADVOCATE, for the Respondent.

ORDER

Mahajan, J.

MAHAJAN, J.—This is a petition for revision by the defendants challenging the order of the Court below allowing the plaintiff to sue in *forma pauperis*. The sole contention of the petitioner is that he made the court-fee amount available to the plaintiff before the order granting permission to sue *in forma pauperis* was passed. In my view the volition of the defendant in making the funds available would have no meaning in determining the question whether the plaintiff is or is not a pauper. It is not a case where the plaintiff has come into possession of funds not at the mercy of the defendant but in his own right. In this case certainly the Court will not grant permission to the plaintiff to sue *in forma pauperis* but this is not that type of a case. Moreover, as observed by Dalip Singh, J., in *Maratab Ali Shah v. Madan Lal* (1), a petitioner can have no possible grievance assuming the order to be wrong, the only person really affected is the Crown and the High Court can interfere in a proper case, but it would be slow to move at the instance of the opposite party, i.e., the defendant." I am in respectful agreement with these observations and following the decision in *Maratab Ali Shah's case*, I dismiss this petition. However, there will be no order as to costs.

Mr. Chetan Dass, who appears for the plaintiff-respondent, undertakes not to withdraw the amount deposited by the defendant in the trial Court.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

BLANDA AND OTHERS,—Appellants

versus

DUNI CHAND *alias* BRAHMU,—Respondent.

Regular Second Appeal No. 1436 of 1961.

Hindu Succession Act (XXX of 1956)—Section 14(2)—
Whether includes oral gifts.

1962

Jan. 11th

(1) A.I.R. 1934 Lah. 295.