

ALLAHABAD HIGH COURT

Kalawati Devi

Vs.

Chandra Prakash

Civil Revn. No. 310 of 1950, against order of Civil Judge, Farrukhabad,

(Raghubar Dayal, J. (On Difference of Opinion between B. Mukerji and J.K. Tandon, JJ.))

17.02.1950. 02.09.1957

JUDGMENT

R. Dayal, J.

1. (on difference of opinion between B. Mukerji and J.K. Tandon, JJ.) :

One Ganga Prasad instituted the suit in 1944 as a pauper. He prayed for permission to sue as pauper. The necessary permission was granted. Issues were framed on the 18th November, 1946, Ganga Prasad died on 19-11-1946. Smt. Kalawati, his sister applied to be added as a party to the suit as Ganga Prasad's legal representative. She just mentioned in the application that she was also a pauper but she did not make any Formal prayer in the application that she be either allowed to sue as pauper or to continue the suit as a pauper. On the 10th August, 1949 the court ordered that she be added as a party as legal representative of Ganga Prasad. The court then proceeded into an inquiry whether she was a pauper and held on the 17th February, 1950 that she was not a pauper, and therefore she should pay the requisite court-fee.

2. Kalawati then filed a revision in that Court contending that she should have been allowed, as legal representative, to continue the suit as provided under Order 33 Rule 8 of the Code of Civil Procedure, that she could not be ordered to pay court-fee when there was no application by the defendant or the Government Pleader under Order 33 Rule 9 of the Code and that it was not necessary for her to prove for the purpose of continuing the suit that she was a pauper.

3. This revision came up for hearing before Brothers Mukerji and Tandon. They differed and then passed an order on 31-7-1957 to the following effect :

"Since we differ in regard to the question arising in this case we direct that this case, along with our opinions be laid before the Hon'ble the Acting Chief Justice for the purpose of obtaining the opinion of another Judge."

The case has now been referred to me for the necessary opinion.

4. The learned counsel for the opposite party raised a preliminary objection to the effect that the reference was incompetent as the entire case could not be referred in view of Rule 3 Chapter VIII of the Rules of the Court, and as the learned Judges having delivered separate and different judgments had no further power to make the reference. I do not consider the preliminary objection to be sound. The individual judgments of the two Judges are really their individual opinions about the merit of the case. In neither of these judgments any learned Judge says that he allows the application of revision or dismisses it. Each of the learned Judges uses the expression to the effect that he would either dismiss this revision with costs and confirm the order of the court or that the revision be allowed, the order of the learned Judge below be set aside and the suit should proceed in normal course in accordance with the provisions of Order 33 Rule 8 of the Code. I do not take these judgments to be final judgments of the learned Judges as they themselves passed the final order as a court referring the case for the opinion of another Judge. In this connection I am referred to the case reported in *Lal Singh v. Ghansham Singh*¹, The learned Judges who had differed and made the reference had used similar expressions and had not used the expressions that they were dismissing or allowing the appeal. It, however, transpired when the matter came up before the Full Bench of five Judges that the reference was incompetent on account of more than one ground. The first reason was that the difference of the Judges was not on any question of law. A reference to the third Judge is permitted under the law on a point of law. Further one of the differing Judges, who happened to be a member of the Full Bench expressed that each of the two differing Judges had delivered the judgment and meant to deliver it in the case.

This meant that each of them wanted a final disposal of the appeal in accordance with their differing judgments. Under the law the decree of the court below would have been confirmed when the Judges hearing the appeal differed and did not utilize the provision of making a reference of the point of law on which they differed to a third Judge. It was in these circumstances that it was held that that reference was incompetent. It is obvious that that decision cannot be applied to the facts of the present case.

5. There is nothing to indicate that the learned Judges meant to dispose of this revision in accordance with the law in view of their differing judgments.

6. The order of reference passed by the two learned Judges is in full conformity with what Rule 3 Chapter VIII of the Rules of Court requires. This rule is :

"When a case to which the provisions of the Code of Criminal Procedure do not apply is heard by a Division Court composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority, if there shall be a majority. Should the Judges be equally

divided they may state the point upon which they differ and each Judge shall record his opinion thereon. The case shall then be heard upon that point by one or more of the other Judges as may be nominated by the Chief Justice and the point decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it."

¹ ILR 9 All 625 (FB)

The rule contemplates the putting up of the case before a Judge or Judges other than the differing Judges who will, however, hear the case upon the point on which the learned Judges had differed. The use of the word 'case' in the referring order, therefore, lines not mean that the entire case has been referred to another Judge for final disposal. The reference is simply to obtain the opinion of another Judge as those two Judges had differed on a point of law arising in this revision.

7. The point of law arising in this revision is whether Kalawari, legal representative of Ganga Prasad, could be called upon to pay the court-fee payable on the plaint in the suit before she could continue the suit as a legal representative of Ganga Prasad. I may mention at this stage that the first ground in the application for revision indicating that she wanted to continue the suit in terms of Order 33, Rule 8 of the Code of Civil Procedure may mean that she wanted to claim the concession in the matter of court-fee which was available to Ganga Prasad with respect to petitions but the learned Counsel for the applicant has conceded that unless she herself held to be a pauper she cannot have the advantage of any such concession. Those concessions were available to Ganga Prasad on the basis of his being a pauper. The fact that he was a pauper does not necessarily mean that his legal representative is a pauper too.

8. There is no dispute that the order of the Court below to the effect that Kalawari be added as a party to the suit as a legal representative of Ganga Prasad is a correct order. The question simply is whether she can be called upon to pay court-fee necessary on the plaint in the suit. There has been quite a conflict of judicial opinion upon this legal point. One view is that the legal representative cannot continue the suit without payment of the necessary court-fee if he is not a pauper and that if he is a pauper he ought to apply for his being adjudged as such. This view has appealed to my brother Tandon. The other view is that the legal representative has the right to continue the suit without showing that he was a pauper. He just steps in as a legal representative and takes part in the further progress of the suit. This view has appealed to my brother Mukerji. I agree with brother Mukerji and am of opinion that she cannot be called upon to pay the court fee during the pendency of the suit as a condition precedent for her continuing; the suit as legal representative of Ganga Prasad.

9. The other view contemplates the existence of two rights in the pauper. One is a right to sue as a pauper and the other is a right to sue for the redress of the wrong. The right to sue as a pauper is personal to the plaintiff who originally sued and got himself adjudged as a pauper. It does not devolve on the legal representative. The right to sue for the redress of the wrong is not a personal right of the pauper plaintiff, and it devolves on the legal representative and therefore the legal

representative can be brought on the record as a party under Order 22, C.P.C., in case the right to sue survives the death of the plaintiff. It is considered that the personal right to sue as pauper continues during the proceedings of the suit and, therefore, such right ends when the original pauper plaintiff dies and does not devolve on the legal representative. Therefore, the legal representative must either pay the necessary court-fee or must get himself declared as pauper. To hold so means that the substantial right to sue becomes a restricted right in the case of a pauper plaintiff. The legal representative does not get the full rights, which a person has, to go to the law court to seek redress of the grievance. The pauper has got unlimited right to institute a the suit by the provisions of Rule 1, Order 33, C.P.C. and the so called right to sue as pauper really refers to the right of a pauper to get permission of the court on proof of his pauperism to institute the suit as a pauper. It is not a right in the strict sense of the term. Anyway if it be said that there is a right to sue as a pauper that right would get exhausted when the permission is given and the application containing all the necessary particulars of the plaint is deemed a plaint and is treated as the basis of further proceedings in the suit in view of Rule 8 of Order 33 C.P.C. Such a limited personal right will not run throughout the suit.

10. It was contended that in view of the expression "ought not to continue to sue as a pauper" used in clause (b) of Rule 9 the right to sue as a pauper included the right to maintain and continue the suit. Rule 1 of Order 33 C.P.C., confers a right on a pauper to institute the suit. Surely institution of the suit does not mean the maintaining or the continuing of the suit. Whereas the suit is instituted by the presentation of a plaint the further proceedings follow according to legal provisions. It only means that he is not to get the advantage of not paying court-fee on certain petitions.

11. I am, therefore, not in agreement with the cases opposed to my view and which are *Manaji Rajuji v. Khandoo Baloo*². *In re Radhakrishna Iyer, Mt. Tankibai v. Mt. Bhikai*⁴, and *Jato Singh v. Mt. Malti Kuer*⁵, The cases which support the view I have taken are *Ammakannatnmal v. V.K. Damodara Mudaliar*⁶, *Sivtigami Ammal v. Gopalaswami Odayar*⁷, and *Mohammad Zaki v. Municipal Board, Mainpuri*⁸,

12. When a pauper plaintiff dies and a legal representative is brought on the record in accordance with the provisions of Order 22, Rule 3 of the Code of Civil Procedure, there arises no occasion to demand the court-fee. The rule is :

"3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court, on an application made in that behalf shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the

defendant the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff."

The court has to proceed with the suit after it had added the legal representative as a party. It cannot stay its progress on the ground that proper court-fee has not been paid. There is no provision in the Court-fees Act or in any of the rules under Order 33 of the Code of Civil Procedure to justify the demand.

In the absence of any such provision I am of opinion that no demand of court-fee can be made. It has been urged for the opposite party that in the absence of any provision

² ILR 36 Bom 279

⁴ AIR 1933 Nag 334

⁶ AIR 1928 Mad 66

³ AIR 1925 Mad 819

⁵ AIR 1947 Pat474

⁷ AIR 1925 Mad 765

⁸ 16 ALJ 440 : (AIR 1918 All 177 (1))

the court's order requiring the legal representative to pay the necessary court-fee cannot be said to be against law and therefore bad. With this I do not agree. The provisions of Court-Fees Act must be interpreted strictly and any demand of court-fee, which must necessarily be deemed to be in furtherance of the provisions of the Court-fees Act, must be strictly scrutinized. There should be a rule to justify the demand. No rule is necessary if the demand is not to be made.

13. I have been referred to the provisions of Order 33 Rule 9 clause (b) and R. 11 of the Code to support the contention that the necessary court-fee can be demanded during the pendency of the suit, and that therefore the legal representative can be called upon to pay the court-fees on the plaint.

14. Rule 9 is :

"The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writings has been given to the plaintiff, order the plaintiff to be dispaupered :

(a) If he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he. ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

Rule 11 is :

"Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal

charges (if any) chargeable for such service or

(b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper."

15. The contention is that the legal representative when added as a party to the suit becomes the plaintiff and, therefore, becomes liable to such action which could be taken against the original plaintiff in view of the aforesaid Rules 9 and 11, and as the original plaintiff could be disappeared and could be called upon to pay the court-fee, the legal representative could also be dispaupered if he has means to continue the suit and can thereupon be called upon to pay the necessary court-fee. I do not consider these contentions to be sound and am of opinion that the word plaintiff in these rules should be taken to refer only to the original plaintiff and not to his co-plaintiffs who are added as parties later on or to his legal representative, who is added as a party after his death. It appears to me that it is only the person who has been held to be a pauper who can be disappeared.

When a legal representative has not been held to be a pauper no question arises of dispaupering him. If the legal representative cannot be dispaupered under Rule 9, the provisions of Rule authorizing the court to order the plaintiff to pay court-fee will not come into play. A plaintiff is dispaupered not only when he comes into means, to pay the necessary court-fee or when he enters into an agreement with reference to the subject-matter of the suit under which any other person has obtained interest in such subject-matter but also when his conduct in the course of the suit is considered by the court to be vexatious or improper. If the plaintiff, who has no means to pay the court-fees, can be called upon to pay the necessary court-fee on account of his improper conduct in the course of the suit the purpose of Rule 1 Order 33 would fail. This rule is :

"Subject to the following provisions, any suit may be instituted by a pauper."

Its object obviously is that a person unable to pay court-fee should not be deprived of seeking a remedy in the law court merely on account of his poverty. He should have his rights determined in the courts of law just like other persons who are able to pay the requisite court-fee. It was, of course, necessary to provide how the court is to determine whether the person concerned was a pauper and was unable to pay the necessary court-fee. It was for that purpose that the various rules of Order 33 C.P.C. deal with the mode of inquiry into the pauperism of the person concerned.

16. There is no provision in Order 33 with respect to the consequences which follow when the plaintiff is disappeared under Rule 9. One result may be that the concession which is allowed to the pauper plaintiff under Rule 8 with respect to the court-fee on certain documents ends. The provisions of this Order make no mention of the relief about the court-fee on the plaint and, therefore, the dispaupering of the plaintiff should not lead to a demand of the court-fee from him

during the pendency of the suit.

17. Rule 11 itself authorized the Court to order the plaintiff, or any person added as co-plaintiff to the suit, to pay the court-fee which would have been paid by the plaintiff if he had not been permitted to sue as pauper. This power can be exercised in four contingencies. Firstly when the plaintiff fails in the suit, secondly when the plaintiff is dispaupered, thirdly when the suit is withdrawn and fourthly when the suit is dismissed for certain specified reasons. There is nothing in the rule to indicate in specific terms the stage when this order is to be passed. In three out of the four contingencies just mentioned such an order about the payment of court-fee must be passed when the proceedings in the suit come to an end. It appears to be fair conclusion from the context in which the contingency of the plaintiff being dispaupered is mentioned that the order about the payment of court-fee on the happening of that contingency must also relate to the stage when the proceedings had come to an end and not to the pending stage of the suit. There is another reason also which leads to the same conclusion. In case a plaintiff is dispaupered the Court can order not only the plaintiff to pay the court-fee but can also order any other person, added as co-plaintiff. There is no such restriction on the expression co-plaintiff as would mean that the co-plaintiff contemplated is a pauper co-plaintiff.

In fact all the co-plaintiffs who join to institute the suit in the first instance will have to prove themselves to be paupers before any permission to sue as pauper would be granted. The co-plaintiff referred to here must, therefore, be a co-plaintiff who is added as a plaintiff subsequent to the institution of the suit. If Rule 11 had contemplated that the dispaupered plaintiff, who had come into means, would be called upon at once to pay the necessary court-fee, there could be no reason for giving an option to the Court that the court-fee may be demanded from the co-plaintiff. It appears to me that the only condition possible then is that though a plaintiff is dispaupered during the pendency of the suit, the order about the payment of court-fee will be made against him after the close of the proceedings. Such a provision seems to restrict the general power given to the Court under Rule 10 to order any party to pay the court-fee to the Government. In case a plaintiff has been dispaupered the Court will cease to have that option but will have to order, even in the case of the plaintiff succeeding in the suit, that the court-fee would be recoverable by the Government from the plaintiff. I may refer to the case *Rajdeo Singh v. Jagdeo Singh*⁹, where an order calling upon the dispaupered plaintiff to pay the court-fee during the pendency of the suit had been upheld without any discussion about the stage at which the plaintiff has to be ordered to pay it.

18. It was observed in AIR 1925 Madras 765 at page 767 :

It may be that under Rule 9 of Order 33 the legal representative of the deceased plaintiff is sometimes shown to have come into possession, in his character as legal representative and out of the estate of the deceased of sufficient means within the meaning of clause (b); then undoubtedly he too may be dispaupered even as the original plaintiff might have been."

19. In *Arumuga Goundan v. Subramania Goundan*¹⁰, it was held that an application under Order 33 Rule 9 C.P.C. can be filed against the legal representative of a pauper plaintiff in view of Section 146 C.P.C. An application may be competent but the question is whether the legal representative can be dispaupered on the basis of his possessing means independent of the deceased plaintiff's estate. I would say that he cannot be dispaupered.

20. In *Kayarnbu Pilliai v. Lakhshmi Ammani Animal*¹¹, it was held that the word plaintiff at both the places in Rule 9(c) of Order 33 C.P.C. includes the legal representative.

21. In this state of law the Madras High Court amended Rule 11 of Order 33. The new rule is :

"11. Procedure where pauper fails. Where the plaintiff fails in the suit or is dispaupered or where the suit is withdrawn or where part of the claim is abandoned or where the suit is dismissed :

(a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-

⁹ AIR 1934 Allahabad 323 (1) ¹¹ AIR 1938 Mad 491

¹⁰ AIR 1931 Madras 324

fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing, the court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fee and in the case of abandonment of part of the claim the proportionate court-fee, which would have been payable by the plaintiff if he had not been permitted to sue as a pauper.

In cases where the plaintiff is did paupered the Court may, instead of proceeding under the previous paragraph, order the plaintiff to pay the requisite Court-fee within a time to be fixed by it and in default dismiss the suit and make an order for the payment of court-fee as in the previous paragraph. Where the Court finds that the suit has been instituted unreasonably or improperly by a next friend on behalf of a minor plaintiff on a cause of action which accrued during the minority of such plaintiff, the Court may order the next friend to personally pay the court-fee." Special provision is made for ordering the dispaupered plaintiff to pay the requisite court-fee during the pendency of the suit and for dismissal of the suit in default. Such a course is taken instead of proceeding under the general provisions empowering the Court to order the plaintiff or co-plaintiff to pay the court-fee and which could be done, according to my view, at the conclusion of the suit.

22. In case the application for permission to sue as a pauper is granted, it is nowhere provided in these rules that he could then institute the suit without payment of the court-fee or that the court-fee necessary on the plaint is remitted or that its payment is put off. Rule 8 of Order 33 C.P.C. is :

"Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit."

It provides that when the application for permission to sue as pauper is granted, it shall be deemed the plaint in the suit and the suit shall proceed in all other respects as a suit instituted in the ordinary manner. It could have been mentioned here that the plaintiff shall not be liable to pay any court-fee on the plaint till any of the contingencies provided in other rules arise. There is complete omission of the question of the plaintiff's paying the court-fee on the plaint in this rule. There is no provision in the Court Fees Act which provides directly to the effect that a plaint or any other document filed by a pauper plaintiff could be acted upon even when no court-fee is paid. The omission in both the enactments seems to be due to the fact that the Legislature provided special law for the institution of the suits by a person who was unable to pay the court-fee and who in all fairness was not deprived of seeking redress in court on account of the applicability of the provisions of the Court-Fees Act which on principle are generally considered to be hindrances to the seeking of redress by aggrieved persons. It is the natural right of a person to go to a law court for the redress of wrongs done to him. If a person proves himself to be a pauper, he in view of Rule 1, Order 33 C.P.C. has a right to institute a suit without payment of court-fee. This right was exercised by Ganga Prasad. The suit has been instituted. The suit must proceed as a suit instituted in the ordinary manner i.e., instituted by presentation of a plaint sufficiently stamped with the requisite court-fee. No demand about the payment of court-fee can be made during the progress of the suit instituted on a plaint sufficiently stamped with court-fee. Of course, provisions have been made for the realization of necessary court-fee from a pauper in certain circumstances. Rules 10, 11 and 11(a) of Order 33, C.P.C. deal with them. When these provisions exist there does not appear to be any reason why the matter of realization of court-fee be hurried up during the pendency of the suit merely because the original plaintiff happened to die.

23. I am, therefore, of the opinion that neither the provisions of R. 9 nor of Rule 11 necessarily lead to the conclusion that the legal representative, when added as a party on the death of the pauper plaintiff, must be called upon to pay the court-fee on the plaint.

24. Reference has also been made to R. 15 in connection with the applicant having a right to sue as a pauper. I refer to this rule at this stage for the inference that the dispaupering of the plaintiff does not amount to a refusal to allow the applicant to sue as a pauper. Had it so amounted there could not have been any further progress in the suit, because Rule 15 contemplates or creates a bar to any subsequent application to sue as pauper and also a bar to the institution of another suit unless the costs of the previous suit had been paid. The further progress of the suit cannot be said to be in a fresh suit instituted by the dispaupered plaintiff. If it had amounted to that the

dispaupered plaintiff would have had to pay also the costs incurred by the Government or the opposite party in opposing the application for leave to sue as pauper. This supports the view that the stage of bringing on record the legal representative of the deceased pauper plaintiff is not the stage, even notionally, of the institution of a fresh suit by the legal representative and that he cannot therefore be asked to pay the requisite court-fee if he had not been adjudged as a pauper.

25. It is not rare that the Court determines that the plaintiff had paid insufficient court-fee and ought to pay more and yet the Court cannot order a plaintiff to make good the deficiency or penalize the plaintiff for not making good the deficiency in court-fee. Reference may be made to the provision of Section 6 of the Court Fees Act as amended in this state. Sub-Section (1) of Section 6 provides that no document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document. Sub-Section (2) allows the Court to receive an insufficiently stamped plaint or memo of appeal but directs that the plaint or the memo of appeal shall not be acted upon until the deficiency has been made good within the time allowed by the Court. Sub-Section (3) provides the procedure to be followed by the Court when an objection to the sufficiency of court-fee is raised by or on behalf of the Chief Controlling Revenue Authority under Section 24-A of the Act.

It directs that the question of the sufficiency of court-fees would be decided first and in case the court-fee paid be insufficient, the Court will call upon the plaintiff or the appellant, as the case may be, to make good the deficiency within certain time and that in case of default to make good the deficiency, would reject the plaint or the memo of appeal. If an objection to the court-fee is raised before the Court in other circumstances the procedure to be followed is given in Sub-Section (4) of Section 6 of the Court Fees Act. Sub-Section (4) is :

"Whenever a question of the proper amount of court-fee payable is raised otherwise than under Sub-Section (3), the court shall decide such question before proceeding with any other issue."

This is practically the same which is enjoined in Sub-Section (3), but there is nothing in this Sub-Section which makes it the duty of the court to call upon the plaintiff or the appellant to make good the deficiency in court-fee and to take any penal action in case the deficiency is not made good. In this respect this provision is different from the provision of Sub-Section (3). In the absence of any other provision it would appear that in case the deficiency in court-fee is not made good by the plaintiff or the appellant the case will proceed and the deficient court-fee would be realized at a later stage under any other legal process available to the trial court, to the appellate court or to the Government. It is, therefore, nothing unusual if the plaintiff be dispaupered and yet he is not called upon to pay the court-fee during the pendency of the suit, but an order about the payment of the court-fee made after the close of the proceedings.

26. It is urged for the respondent that when a plaint is found to be insufficiently stamped action can be taken under Order 7 Rule 11, C.P.C. at any stage of the suit. This is supported by a number of cases including *Kishore Singh v. Sabdal Singh*¹², The provisions of present O. 7, Rule 11, C.P.C. correspond to Section 54 of the Code of Civil Procedure of 1882. Section 53 of that Code provided for the rejection of the plaint in case it is not ordered to be amended or not amended and provided that such action could be taken before the first hearing of the suit. There was no such restriction under Section 34 and it was held that the plaint could be rejected for the reasons given in that section at any stage of the suit. The position, however, under the Code of 1903 is different. Rule 10 of Order 7, C.P.C. deals with the return of a plaint at any stage of the suit to be presented to the Court in which the suit should have been executed. Rule 11 which just follows Rule 10 simply says that the plaint shall be rejected in the following cases. If a comparison of the language can give any clue for interpreting the contents of Rule 11 it will lead to the inference that the plaint is to be rejected in the circumstances mentioned in Rule 11 at the preliminary stage and not at any stage of the suit. This question does not arise directly for determination in this case. It is unnecessary to consider any further this provision when in my opinion the Court cannot demand deficient court-fee at the stage of adding a legal representative on the death of the pauper plaintiff. The question of default or payment of court-fee and the right order to be passed then does not arise.

27. In view of the above I am of the opinion that the court below was wrong in entering into the question whether Kalawati, the legal representative of Ganga Prasad, was a pauper or not and in ordering, her to pay the necessary court-fees on a finding

¹² ILR 12 All 553

that she had failed to prove herself to be a pauper. My opinion is that she could continue the suit as legal representative of the deceased without paying the court-fee necessary for the plaint. I order that this opinion be sent to the Bench concerned.

Order accordingly.