

**The Secretary of State for India in Council Vs. Jillo**

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**Court :** Allahabad

**Decided On :** Dec-31-1969

**Reported in :** (1899)ILR21All133

**Judge :** Knox, Actg. C.J., ;Banerji and ;Burkitt, JJ.

**Appellant :** The Secretary of State for India in Council

**Respondent :** Jillo

**Judgement :**

Knox, Actg. C.J., Banerji and Burkitt, JJ.

1. Musammat Jillo, the respondent to this first appeal, presented in the Court of the Subordinate Judge of Moradabad an application praying for permission to institute a suit in forma pauperis. She was examined and her deposition recorded. After that a date was fixed, and notice given to the Government Pleader, as required by Section 408 of the Code of Civil Procedure. Upon the day on which inquiry was to be made as to whether Musammat Jillo was or was not a pauper we find the Court recording an order, which is both extraordinary and in its terms contradictory. The order runs as follows: The applicant's pleader stated that he was not directed to conduct the case, and he did not produce any evidence as to (the applicant's) poverty. The defendant's pleader also is absent. As the application is rejected for want of prosecution, the Government Pleader also is not entitled to any costs. Order: The application be rejected with costs.' We examined the original order, as we found it difficult to believe that the translation before us was a correct translation. We find that the order has been correctly translated and is as above. We next examined the decree: we find the language of that equally, if not more, unsatisfactory. The effective order of the decree is in these terms: It is therefore ordered that the application be rejected with costs in default of prosecution.' There is nothing whatever to indicate by which of the parties and in what proportion the costs are to be paid or to whom they are to be paid. It would be a matter of regret if we found a decree like this passed by the most junior Munsif in these Provinces. From this decree the present appeal before us has been filed by the Secretary of State for India in Council, contending that the appellant is entitled to his costs inasmuch as he appeared to protect the revenue, and, it might have been added after he had received notice from the Court calling on him so to appear.

2. A preliminary objection was raised to the hearing of the appeal, on the ground that the order under consideration was not a decree within the meaning of the Code of Civil Procedure, and that the order was not one appealable under Section 588 of the Code of Civil Procedure. We are of opinion that the objection taken is a sound one and must prevail. The learned Government Advocate attempted to support the appeal

upon the authority of the case *Baldeo v. Gola Kuar* (1886) I.L.R. 9 All. 129. That case is one not entirely on all fours with the present, still it very much resembles it, and was certainly one on which the learned Government Advocate was entitled to rely in support of his contention. If the learned Judges who pronounced that decision intended to lay down that an order like the one in appeal here was a decree within the meaning of the Code of Civil Procedure, we find ourselves unable to concur with them. The order before us was not an adjudication in any stage of a suit. It was passed upon an application which, if granted would, after the order granting it, and only then, have matured into a plaint in a suit. It was not therefore an adjudication deciding a right claimed in a suit. It is true that the definition given for the word 'decree' goes on to say that an order rejecting a plaint, or directing accounts to be taken or determining questions mentioned or referred to in Section 244 is under certain circumstances, within the definition of a decree. The only part of this portion of the definition which bears at all upon the present case are the words 'an order rejecting a plaint.' We have, however, pointed out above that, in the case before us the stage had not been reached in which the application filed by Musammat Jillo could be deemed a plaint. A similar point to that before us was considered by this Court in the Full Bench ruling in the case of *Lekha v. Bhauna* (1895) I.L.R. 18 All. 101, in which the Court held that an order under Section 549 of the Code of Civil Procedure was not a final expression of an adjudication upon any right claimed or defence set up within the meaning of the first paragraph of the definition Clause relating to decrees and was not an order appealable as a decree. We therefore dismiss this appeal, but without costs. The order passed by the Subordinate Judge is so extraordinary that we direct this case to be treated as a case in revision under Section 622 of the Code of Civil Procedure, and that it be taken up on a further date so as to allow Musammat Jillo, if she be so advised to be heard.

#### ORDER

1. We have in previous proceedings commented upon the extraordinary nature of the order passed by the learned Subordinate Judge. There is no question whatever that in passing the order he did on the 4th of January 1896, he acted with material irregularity. We accordingly set aside that order, whatever it may be, for its terms are so ambiguous and contradictory that it is impossible to interpret it, and in lieu of it we pass this order. We direct that the application of Musammat Jillo for permission to sue in forma pauperis be dismissed with costs, which will be paid by Musammat Jillo. The Secretary of State will get his costs both in the lower Court and in these proceedings.

\* Civil Revision, No. 49 of 1898.