Two witnesses appeared before the trial Court to show that certain proprietors of land did in fact take in adoption either their own daughters or their daughters' children. Gainda Singh, D.W. 3, testified to the fact that his own father was adopted by his maternal-uncle, and Mahan Singh, D. W. 5, stated that one Partap Singh adopted his own daughter. These two instances are, in my opinion, sufficient to rebut the weak presumption which has arisen in this case. It is scarcely necessary to mention that adoption of daughter's son is regarded as valid in the territory which formed part of the erstwhile State of Patiala *Fateh Singh* v. *Partap Singh* (1), and *Puran Singh* v. *Jaswant Singh* (2). It is prevalent in the territory which forms part of the Punjab for in *Mt. Sukhwant Kaur* v. *Balwant Singh* (3), a Division Bench of this Court held that a sister has a right to succeed in preference to collaterals.

For these reasons I am of the opinion that it is within the competence of a sonless proprietor to take in adoption a son of his daughter, that this practice is in consonance with the general Customary Law of the Province and that this general custom has not been varied by any special custom. I would accordingly accept the petition, set aside the order of the Courts below and direct that the declaratory suit filed by Ram Chand be dismissed. There will be no order as to costs.

REVISIONAL CIVIL.

Before Bhandari, C. J.

PREM SINGH-DEVIDITTA MAL,— *Petitioners.*

versus

SHRI *SAT RAM DAS* AND OTHERS,—*Respondents.*

Civil Revision No. 325-D of 1953.

1957

March, 8th

Transfer of Property Act (IV of 1882)—Section 130—Assignment—Meaning of—Valid assignment, conditions for.

(1) 1 Patiala L.R. 334
(2) 1 Pepsu L.R. 117
(3) A.I.R. 1951 Simla 242

Code of Civil Procedure (V of 1908)—Order 33, Rule 5 and Order 7, Rule 10—Application to sue in forma pauperis—Question of Jurisdiction—Whether can be gone into by the Court determining the question of pauperism—Return of plaint—Assignment of debt not valid—No cause of action arises within the jurisdiction of the Court.

Held, that an assignment in law is an act by which one person transfers to another or causes to vest in another his right or title to something before the object of the transfer has become property in possession of the assignor. It is the transfer or setting over of the right to fruits of cause of action from one person to another. It does not differ in its essential elements from any other contract and must, therefore, comply with the fundamental requisites which are applicable to contracts generally. A valid and enforceable contract of assignment comes into being when it is executed by parties possessing legal capacity to contract, when it is supported by consideration, when it is not contrary to law or to public policy, when it is not tainted with fraud or illegality and when it is not the result of an agreement between the assignor and the assignee that they shall divide the property sued for between them in consideration of the assignee carrying on the suit in his own name and possibly also at his own expense.

Held, that it is within the competence of the Court to whom an application to sue in *forma pauperis* is presented to determine the preliminary question of jurisdiction. When a petition for leave to sue in *forma pauperis* is presented and a preliminary objection as to the pecuniary jurisdiction of the Court is raised *in limine*, the Court must go into that question and, if it finds that it has no pecuniary jurisdiction over the matter, the application can be returned for presentation to the proper Court.

Held, that when the assignment of debt is not valid, no part of the cause of action can be said to have arisen within the jurisdiction of the Court and, therefore, it is the duty of the trial Court to act under the provisions of Order 7, Rule 10 of the Code of Civil Procedure, and to return the petition to the assignee for presentation to the proper Court.

Petition under section 44 of Punjab Act VI of 1918, and section 115 of Civil Procedure Code, for revision of the order of Shri Banwari Lal, Sub-Judge, 1st Class, Delhi,

dated the 14th August, 1953, holding the respondent to be pauper and permitted to sue as pauper.

HANS RAJ DHAWAN, for Petitioners.

MAKHAN LAL DHAWAN, for Respondents.

JUDGMENT

Bhandari, C.J.—This petition under section 115 of the Code of Civil Procedure raises the question whether it is within the power of a civil Court to return an application for leave to sue in *forma pauperis* for presentation to a Court of competent jurisdiction. Bhandari, C. J.

It appears that during the year 1947 defendants Nos. 5 to 9 who are real brothers advanced certain moneys to defendants Nos. 1 to 3 at a place which now forms part of the territory of Pakistan On the 29th March, 1950, the creditors in whom the chose in action was vested executed a deed of assignment at Delhi by virtue of which they assigned the debt in question to Satram Das, a son-in-law of Kanshi Ram defendant No. 5. A few days later, that is on the 4th April, 1950 Satram Das brought a suit against defendants Nos. 1 to 3 and in the alternative against defendants Nos. 5 to 9 for the recovery of a sum of Rs. 14,500. The suit was filed in *forma pauperis* and the first question which arose for decision in the trial Court was whether the Courts in Delhi had jurisdiction to hear and determine pauperism of the plaintiff. The Court came to the conclusion that the deed of assignment was executed at Delhi, that the deed was not fictitious, that the plaintiff is a pauper and that the petitioner was at liberty to sue in *forma pauperis*. Defendants Nos. 1 to 3 are dissatisfied with the order and have come to this Court in revision.

An assignment in law is an act by which one person transfers to another or causes to vest in another his right or title to something before the object of the transfer has become property in possession of the assignor. It is the transfer or

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setting over of the right to fruits of cause of action from one person to another. It does not differ in its essential elements from any other contract and must therefore comply with the fundamental requisites which are applicable to contracts generally. A valid and enforceable contract of assignment comes into being when it is executed by parties possessing legal capacity to contract, when it is supported by consideration, when it is not contrary to law or to public policy, when it is not tainted with fraud or illegality and when it is not the result of an agreement between the assignor and the assignee that they shall divide the property sued for between them in consideration of the assignee carrying on the suit in his own name and possibly also at his own expense. A person who wishes to obtain a decree on the basis of a deed of assignment must allege and prove a valid assignment in order to show that he had a cause of action.

The plaintiff, who is a hawker by profession, is a son-in-law of the five creditors of defendants Nos. 1 to 3 and has brought a suit on the basis of a deed of assignment which was executed at Delhi a few days before the institution of the suit. He states that the assignors owed him a certain sum of money, that they were unable to repay this loan and that they executed the deed of assignment in satisfaction of this pre-existing debt. His statement in this behalf cannot be accepted at its face value, for no pronote or other document has been placed on the file, no books of account have been produced and no evidence has been adduced in support of the assertion that the assignors owed any debt to the assignee. His father is a displaced person from West Pakistan registered in Delhi. The value of the plaintiff's stock-in-trade does not exceed Rs. 10. He does not pay any income-tax or land revenue, or maintain any account in any

bank. He does not appear to have advanced any moneys to any one else. He never issued a notice to the assignors to clear off the debt which was owing to him. He never undertook a journey to Jullundur with the object of ascertaining the paying capacity of defendants Nos. 1 to 3, the claim against whom he was proposing to purchase from defendants Nos. 5 to 9. He is unable to supply the figures of the expenditure incurred by him in connection with the prosecution of the present suit. He failed to show a valid assignment and therefore did not state a cause of action. On the other hand, the fact and circumstances of the case make it quite clear that he was never in a position to advance any moneys to defendants Nos. 5 to 9, that he did not make any advances to them, that he is closely related to one of the assignors, that he has no interest in the subject-matter of the suit, and that the assignors executed the deed of assignment not in satisfaction of any debt owed by them to the assignee but with the object of securing that the assignee should carry on a suit in his own name and that decree, if any, should be divided between the assignors and the assignee. The transaction was a champertous one and the assignment does not appear to be supported by an adequate or indeed by any consideration. I am accordingly of the opinion that the deed of assignment which is said to have been executed in Delhi a few days before the institution of the suit was executed solely with the object of conferring jurisdiction on the Courts at Delhi to entertain the present suit. There can be little doubt that the subject-matter of the suit really vests in the assignors. If the assignment is not valid, no part of the cause of action can be said to have arisen within the limits of the State of Delhi and the Courts at Delhi cannot be said to have had jurisdiction to deal with the case. *Prima facie*, therefore, it was the duty of the trial Court to act under

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the provisions of Order 7, rule 10 and to return the petition to the assignee for presentation to the proper Court.

The learned counsel for the assignee has placed three submissions before me for consideration. It is contended, in the first place, that although Order 33 of the Code of Civil Procedure confers full power on the Court to grant or to refuse an application for leave to sue in *forma pauperis*, it does not empower the Court, either expressly or by necessary implication, to determine the preliminary issue of jurisdiction. Secondly, it is argued, the Court has no power to return the application for presentation to the proper Court, for the provisions of rule 10 of Order 7 apply only to plaints and an application under Order 33, rule 1 cannot be regarded as a plaint until and unless it ripens into one on the application being granted *Gupteshwar Missir* v. *Chaturanand Missir and others* (1). Thirdly, it is contended that in view of the provisions of rule 5(d) of Order 33 the Court is required to see whether the statements made in the application *prima facie* disclose a cause of action. It is not open to the Court to embark upon the consideration of complicated and doubtful questions of fact or law that may arise upon the allegations of the applicant, for the purpose of determining whether the allegations show a cause of action *U. B. a Dive and others* v. *Mg. Lu Pan and another* (2), or for the purpose of determining questions of local jurisdiction *Hari Krishna Datta* v. *K. R. Khosla* (3). At this stage the Court is concerned only with the question of pauperism and has no power to go into the question of local jurisdiction.

(1) A.I.R. 1950 Pat. 309
(2) A.I.R. 1932 Rang. 107
(3) A.I.R. 1934 Lah. 231

I regret I am unable to concur in the contention that it is not within the competence of a Court dealing with an application to sue as a pauper to examine the question of jurisdiction. Although a Court of law is constituted and erected for the decision of controversies, it can decide only such matters which fall within the scope of its jurisdiction and which are properly presented to it by a litigant entitled to be heard. If the Court has no jurisdiction of the subject-matter on which it assumes to act, it has no power to proceed at all, for it is an accepted principle of law that the proceedings of a Court without jurisdiction are a nullity and its judgment without effect either on the person or property. Indeed, it has been said that if a Court finds an essential jurisdictional fact without any proof the action of the Court is void and of no effect. A Court without jurisdiction cannot decide the case either in favour of one party or that of another: it can only dismiss the case for want of jurisdiction or return the plaint for presentation to the proper Court. If it proceeds to deliver a judgment when it has no power to do so, the judgment itself becomes *coram non judice* and *ipso facto* void. It is of the utmost importance therefore that before a Court proceeds to consider any matter brought before it, it should enquire of its own motion whether it has jurisdiction to entertain the particular controversy even though the question is not raised by the parties to the litigation. Every objection in regard to want of jurisdiction should be examined at the earliest opportunity, for if the Court is without jurisdiction it has no power to enter upon the enquiry or to pronounce upon the matters in controversy between the parties. It seems to me therefore that, quite apart from authority, every Court or other judicial tribunal possesses an inherent power to determine the boundaries of its own jurisdiction.

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Nor is there any substance in the contention that a Court entertaining an application for permission to sue in *forma pauperis* has no power to return it to the applicant for presentation to the proper Court. Rule 10 of Order 7 of the Code of Civil Procedure provides that the plaint shall, at any stage of the suit, be returned to be presented to the Court in which the suit should have been instituted, and section 141 provides that the procedure in regard to suits shall be followed as far as can be made applicable, in all proceedings in Courts of civil jurisdiction including proceedings, I apprehend, under Order 33 of the Code of Civil Procedure, (*Bihari Sahu and others* v. *Mt. Sudama Kaur and others* (1)). Now an application under Order 33, rule 1, is in fact a plaint coupled with a prayer to be allowed to sue without payment of the required court-fee (*Periyasami Padayachi and another* v. *Minor Ulaganathan, etc.* (2)), and it seems to me therefore that the framers of the Code have conferred a power and imposed a duty on the Court to which an application under Order 33 is presented to determine whether it has or has not jurisdiction to deal with it. They could not have contemplated that the parties to the suit in which an application has been presented should go to the trouble and expense of adducing evidence in support of their respective contentions only to discover later that the Court had no jurisdiction to entertain the suit or to pronounce upon the pauperism of the applicant. It is of course possible to say that if one Court has no jurisdiction to deal with an application another Court may have and that this other Court can always determine the question afresh; but the Legislature could not have contemplated unnecessary duplication of proceedings. I am accordingly of the opinion that, subject to the provisions of

(1) A.I.R. 1938 Pat. 209
(2) I.L.R. 1949 Mad. 333

rule 5 of Order 33 of the Code of Civil Procedure, it is within the competence of the Court to whom an application to sue in *forma pauperis* is presented to determine the preliminary question of jurisdiction. In *Periyasami Padayachi and another* v. *Minor Ulganathan, etc* (1), it was held that when a petition for leave to sue in *formu pauperis* is presented and a preliminary objection as to the pecuniary jurisdiction of the Court is raised *in limine,* the Court must go into that question and, if it finds that it has no pecuniary jurisdiction over the matter, the application can be returned for presentation to the proper Court.

But I find myself in respectful agreement with the views expressed by the High Courts of Rangoon and Lahore in regard to the provisions of clause (d) of rule 5 of Order 33 of the Code of Civil Procedure. This rule provides that the Court shall reject an application for permission to sue as a pauper where the allegations do not show a cause of action. This rule provides a statutory exception to the broad general principle enunciated by me in an earlier paragraph of this judgment that every judicial tribunal possesses inherent powers to determine the limits of its own jurisdiction and that it is the duty of every such tribunal to examine objections in regard to want of jurisdiction at the earliest opportunity. It declares that certain objections concerning jurisdiction which depend upon the existence or otherwise of a cause of action may not be decided at one stage and may be decided at another. It seems to me therefore that if the allegations made in the plaint disclose a cause of action it is the duty of the Court to proceed to determine the question of pauperism notwithstanding the fact that on a further investigation these allegations may be found to be untrue. The allegations appearing in the application which

(1) I.L.R. 1949 Mad. 333

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was presented by the assignee in the present case do show a cause of action and, although I have come to the conclusion that the assignee has failed to show a valid assignment or a cause of action, I am unable to hold that the Court below should have rejected the application under the provisions of rule 5(d) mentioned above.

But there is another aspect of the matter which needs to be considered. Rule 5 of Order 33 provides that the Court shall reject an application for permission to sue as a pauper where the applicant has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter. I had occasion to state in a preceding paragraph that judging by the poverty of the applicant, the close relationship that he bears to some of the defendants and the other circumstances to which a reference has been made, the subject-matter of the suit vests wholly or partially in defendants Nos. 5 to 9. I am of the opinion that petitioner's application should have been rejected under the provisions of clause (e) of rule 5 of the Code of Civil Procedure.

For these reasons, I would accept the petition, set aside the order of the trial Court and direct that the application for permission to sue in *forma pauperis* be rejected. Ordered accordingly. Defendants Nos. 1 to 3 will be entitled to costs here and below.

I do not think any grounds have been made out which would justify me in certifying that the case is a fit one for appeal to the Supreme Court.

REVISIONAL CIVIL.

Before Bhandari, C. J.

DR. GOPAL DAS,—*Plaintiff-Petitioner.*

versus

DR. S. K. BHARDWAJ AND OTHERS,—*Respondents.*

Civil Revision No. 239 of 1956.

1957

April, 2nd

Code of Civil Procedure (V of 1908)—Section 115—Revision—Scope of interference in—Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Sections 34 and 35.