

1904.
June 24.

HINNIAPPU v. HENDRIS.

D. C., Galle, 7,354.

Leave to sue in formá pauperis—Subject-matter of the action—Civil Procedure Code, ss. 441, 447.

When an applicant seeks to sue *in formá pauperis* for a share of land, and a proctor has certified, under section 447 of the Civil Procedure Code, that he has a good cause of action, it is, nevertheless, open to the respondent, when the question of pauperism comes before the Court under that section, to prove that the applicant's title to part of the share claimed has not been contested, but is purposely misrepresented as contested; and if the Court finds that the applicant's right to a part, worth Rs. 50 or more of his claim has not been contested or disturbed, it has power to refuse to allow the applicant to sue as a pauper.

The applicant's statement of what forms the subject-matter of the action is not binding on the Court.

THE applicant asserted title to three-sixths of a land worth Rs. 1,000, and applied to be allowed to sue as a pauper on the ground that such share formed his only property, and that the respondents disputed his title to, and had ousted him from, the whole of it. The respondents, in showing cause under section 447, admitted that the applicant was entitled to one-sixth of the land, and alleged and proved that they had not contested his right to that one-sixth or disturbed his possession of it. The applicant offered no evidence in rebuttal, but relied on the objection that it was not open to the Court to go behind the certificate of the proctor who had certified that the applicant had a good cause of action in respect of the three-sixths claimed.

The District Judge held that it was open to him to inquire into the issue raised by the respondents, whether the applicant was not purposely misrepresenting that one-sixth share, Rs. 166 in value, had been contested by the respondents. He decided in respondent's favour, and refused leave to sue *in formá pauperis*.

The applicant appealed.

E. W. Jayawardene, for appellant.—The Court had no right to go behind the proctor's certificate that the applicant had a good cause of action in respect of the three-sixths claimed. It had decided summarily one of the issues which would arise at the trial. It was not open to the respondents to say that the subject-matter of the action was different from what the applicant said it was.

H. A. Jayawardene, for respondent.

24th June, 1904. MIDDLETON, J.—

I see no reason to interfere with the order of the Court below. It must be affirmed.

SAMPAYO, A.J.—I agree.