Mt. Haidari Begum and Others Vs Thakur Lakshmi Narainji Maharaj and Others

Court: Allahabad High Court

Date of Decision: May 9, 1927

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 53

Citation: AIR 1927 All 636 : (1928) ILR (All) 101 : 103 Ind. Cas. 77

Final Decision: Disposed Of

Judgement

1. This is a suit u/s 164, Tenancy Act, for profits by a cosharer against the heirs of a lambardar. It has been found not merely that there were no

reliable accounts of actual collections, but affirmatively, that the accounts furnished by the defendants are false and misleading; and the lower

appellate Court has, therefore, given the plaintiff a decree based on the full amount of the jamabandi. This decree has not been limited to the assets

of the deceased lambardar which may have come into the hands of the defendants, as his heirs. No argument was addressed to us on behalf of the

appellant that the decree ought in any event to have beep so limited; but, for reasons to which we will refer later, we are of opinion that the decree

should have been so limited.

2. First, it has been contended that no decree should have been given against the defendants beyond such amount as may have been found proved

to have been actually collected; but; in face of the finding that the accounts furnished are false and misleading, and that there is no reliable evidence

of actual collections, no such decree would in any case be possible, Next, it has been contended that no decree of any sort can be given against

the defendants based on the negligence or misconduct of the deceased lambardar in carrying out his duty to make collections. This argument is, we

think, based on an entire misconception of the rulings upon which reliance has been placed. It is argued that Sub-section (2) of Section 164 has no

application at all where it is not the lambardar himself who is being sued, but where the suit has been, brought in the first place, as in this case,

against the heirs of the lambardar. The argument for the appellant has been entirely founded on certain remarks in the case of Dip Singh v. Ram

Charan [1902] 29 All. 15 and Bharath Singh v. Tej Singh [1918] 40 All. 246. At page 17 of the report in the former case there is the following

passage:

At first sight it might appear that the heir or representative of the lambardar would be so liable in respect of the negligence or misconduct of his

predecessor-in-title, but if this had been the intention of the legislature, we should expect to find in Sub-section (2) instead of the word ''defendant''

the word ''lambardar,'' That word does not occur in Sub-section (2), of Section 164. We are therefore, of opinion that the successor-in title of a

deceased lambardar is not liable to account for profits which his predecessor may have failed to collect or which he permitted to remain

uncollected owing to negligence or misconduct,

3. To appreciate the meaning of this passage it is only necessary to consider what were the facts of that case. The defendants were the son and

two brothers of the deceased lambardar. With the deceased they constituted a joint Hindu family. This (we have examined the original record) was

actually pleaded by the plaintiff and not controverted by the defendants. They were also joint lambardars in succession to the deceased lambardar.

The plaint further alleged that the joint family property had benefited by the collections made by the deceased lambardar who had also been

negligent. The suit was against the defendants as present lambardars in regard to their own conduct and also sought to hold them responsible for

the liabilities of the deceased lambardar and asked for a decree against the defendants for a lump sum of the total amount due on both accounts.

4. Their Lordships suggested in the passage quoted that Sub-section (2) of Section 164, only made the ""defendant"" liable for his negligence or

misconduct and did not make either his heir (this was obiter as the suit was against the defendants as succeeding ""lambardar"" and not as ""heirs"" of

the deceased lambardar) or his representative so liable, and concluded by deciding that ""the successor-in-titles of a deceased lambardar is not

liable"" for the negligence or misconduct of the deceased. In fact no question could arise in that case of the liability of the heir, as the family of the

defendants and the deceased lambardar was joint and Section 53, Civil P.C. did not then exist. We are, however, in full accord with the obiter

dictum that the heir would not be liable and the decision that the successor-in-title to the office of lambardar would not be liable.

5. Our agreement in this view is not, however, influenced by the use of the word ""defendant."" It would have been just the same if the words ""co-

sharer"" and ""lambardar"" had been used; for there is no principle on which the heir or successor-in-title as lambardar could possibly be held

personally liable for negligence or misconduct of the deceased lambardar.

6. If indeed the learned Judges meant, as is contended before us, something more than this, and intended to suggest that in their opinion the use of

the word ""defendant"" in Sub-section (2) of Section 164 indicated that negligence or misconduct of a deceased lambardar died with him and could

be proved for the purpose of fixing liability even on his estate in the hands of heirs, we could not follow them; for, in our view, no such effect could

result from the use of the word ""defendant"" which appears to be used merely as a variant of but as synonymous with, ""lambardar"" as it is similarly

used in Section 165, where it could not possibly have any special significance. But, in fact, we think the learned Judges clearly meant nothing more

than that no personal liability could attach to the heir or successor-in-title.

7. But, further, in that case there was no decision, and could be no decision as to whether the assets of the deceased lambardar could be liable in

the hands of the defendants. The family was joint family and there could be no question of heirs, and there was no suggestion of there being any

self-acquired property of the deceased lambardar; and, we have noted, Section 53, Civil P. C., assuming that it would have helped the plaintiff, did

not exist. The only question for decision, and the only question decided, was: Can a lambardar as successor-in-title of a deceased lambardar be

held personally liable for the consequences of negligence or misconduct of his predecessor. The case is, therefore, in no way opposed to the

proposition that, if there are assets of the deceased lambardar in the hands of the defendants, these assets would be liable for the consequences of

negligence or misconduct of the deceased.

8. The next case to which we are referred is Bharat Singh v. Tej Singh [1918] 40 All. 246. That was a suit brought originally against the lambardar

himself for actual collections, and what he should have collected. He died during the pendency of the suit, and his son was brought on the record as

heir to his assets. This last fact appears clearly from the referring order of Mr. Justice Walsh. The son was brought on the record, not in his

personal capacity, but as holding, the assets; and, as Mr. Justice Walsh put it, the sole question was: What was the liability in his lifetime of the

lambardar and what was the liability of his estate after his death? Mr. Justice Walsh referred the case because there was a considerable body of

authority, as he put it, for the proposition that the liability of the lambardar for negligence did not survive his death, a proposition with which he

disagreed. The Full Bench held that the liability would survive. As Mr. Justice Banerji phrased it:

On principle it does not seem that the assets of the deceased lambardar should escape liability simply because the said lambardar, who had

neglected to make collections or was guilty of gross misconduct, happened to die after the expiry of the year during which the collections had to be

made.

9. He further remarked:

In any case the liability of the representative of the lambardar would not he a personal liability.

10. Without following the reasoning of the learned Judge in its entirety as to the import of the words ""plaintiff"" and ""defendant,"" with these

expressions of opinion we are in entire agreement.

11. Two isolated phrases in the judgments in this case have been pressed upon us on behalf of the appellant. Mr. Justice Banerji said, on page 253

of I. L, Rule 40 All:

If the person who was sued was the representative of the lambardar, he would be the defendant in the suit, and he would not be liable, according

to the language of the section [Sub-section (2) of Section 164, as the misconduct or negligence] could not be his misconduct or negligence.

However, we are not called upon to decide that question in this case.

12. Mr. Justice Piggott said:

He himself could not be held liable for any negligence or misconduct on the part of his father.

13. Neither of these passages support the appellant here. They do not, in our opinion, purport to hold anything more than that the heir would not

be personally liable, and they do not support the proposition that the estate of the deceased lambardar would not be liable in the hands of his heir.

14. There is nothing in either of the two cases, which, to our mind, is opposed to the conclusion that in this case the plaintiff was entitled to a

decree against the estate of the deceased lambardar in the hands of the defendants.

15. In our view Section 164 really gives no rise to any difficulty. Sub-section (1) provides for the simple suit for collections against the lambardar

himself. Sub-section (2) merely says that he may further be held liable for non-collections due to negligence or misconduct. We agree with Mr.

Justice Walsh that the words ""plaintiff"" and ""defendant"" are merely synonymous for the ""co-sharer"" and ""lambardar"" referred to in Sub-section (1)

just, as we have noted, as they are used in Section 165 where the change cannot have any special significance. The legislature, in framing Section

164, had not in view at all suits against the assets of a deceased lambardar in the hands of others, but left such a case, as it well might, to be dealt

with in accordance with the ordinary principles governing all cases where it is sought to make the assets, of a deceased person liable, merely

putting the propriety of applying those principles beyond doubt by enacting in Section 166 that the word ""lambardar"" includes his heirs, etc.

16. A plaintiff can, on a suit against the lambardar, prove negligence or misconduct with a view to getting a decree against the lambardar

personally, or in a suit against a holder of assets of the lambardar can prove the negligence or misconduct of the deceased lambardar in order to

get a decree against the estate of the deceased lambardar in the hands of such holder.

17. We think, therefore, that the plaintiff in this case was entitled to a decree to the full amount of the jamabandi, but that decree should have been

limited to the assets of the deceased lambardar in the hands of the defendants. The decree of the lower appellate Court is modified accordingly.

Parties will bear their own costs of the appeal.