(1920) 06 AHC CK 0026

Allahabad High Court

Case No: None

Baij Nath		APPELLANT
	Vs	
Ram Sarup and Others		RESPONDENT

Date of Decision: June 16, 1920

Citation: (1921) ILR (All) 77

Hon'ble Judges: Sulaiman, J; Gokul Prasad, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Sulaiman and Gokul Prasad, JJ.
The circumstances under which this appeal has arisen are briefly as follows: The parties to the present suit put in an objection to the attachment of certain property attached in execution of a decree of one Ganga Sahai. The objection was disallowed, and thereupon some of the parties of this suit and the predecessor in title of others, appointed two persons as special attorneys in order to institute a suit in the Bombay High Court against the aforesaid Ganga Sahai for a declaration that the property was not liable to attachment and sale in execution of the decree which Ganga Sahai had obtained against a third person. After certain evidence had been taken this suit was dismissed for default of prosecution, and the decree holder defendant, Ganga Sahai, was awarded his costs against the parties to the present suit. He realized those costs from the plaintiff, and the present suit, out of which this appeal has arisen, has been brought by the plaintiff for contribution against his co-judgment-debtors.

2. The pleas taken in defence were many. The defendants totally denied all knowledge of the Bombay suit and contended further that the plaintiff was wholly responsible for that litigation and that they wore not liable to contribute. They further denied the plaintiff''s right to claim a one-third share out of the costs.

3. The court of first instance decreed the claim. The defendants went up in appeal and the learned District Judge has upheld the decree of the first court, so far as the amount

claimed for contribution was concerned, but has modified it in regard to a certain item payable on account of the stamp duty and penalty charged on one of the documents produced by the plaintiff in support of his claim the defendants come here in second appeal.

4. The first point taken is that the parties to the former suit being joint tort-feasors who knew or ought to have known that they were doing an illegal or wrongful act, no suit for contribution was legally maintainable. The second point is that the court below have erred in decreeing against the appellants any share of the additional stamp duty and penalty which the respondents paid in order to have a certain document admitted in evidence in furtherance of their own case. The way in which the argument on the first point has been pressed by Dr. Sen is that there is no right of contribution, because there was no special equity in favour of the plaintiffs which would entitle them to contribution. Secondly, that the claim brought in the Bombay Court was an unlawful claim, which was dismissed for default which was totally due to the plaintiff''s fault, and therefore there was no equity in favour of the plaintiff. It will thus appear that the case as put forward in argument is slightly different from the one put forward in the grounds of appeal. It is quite clear that the present case is not that of joint tort-feasors. On the other hand, ft seems to be a suit for contribution arising out of a decree for costs passed in a suit which the plaintiff and the defendants brought in the Bombay Court in exercise of a supposed bond fide right which they claimed in certain property. The property was money payable to one Paras Ram, who was a contractor in the G.I.P. Railway. He had assigned to the parties his rights to recover certain money payable to him by the Company on account of contracts which he had undertaken to perform. The assignment was not recognized by the G.I.P. Railway, but none the less they recognized the then plaintiffs'' claim to this extent that before paying out the money to Paras Ram, their contractor, they used to give previous notice to the then plaintiffs of their intention to do so. the money which stood as payable to Paras Ram was attached by one of his creditors, namely, Ganga Sahai aforesaid, and after the failure of the objection of the parties to the present litigation in the execution department, they instituted the suit in the Bombay Court for a declaration of their right. That was a bond fide suit brought to substantiate a right which they honestly believed existed in them as against Paras Ram, so that the rule regarding joint tort-feasors would not apply to the present case.

5. Coming, however, to the general question whether a suit for contribution between joint judgment-debtors would lie or not, it would depend more or less on the facts of the particular case. Prima facie the fact of a joint decree having been paid off by one of the judgment-debtors, would be some evidence that he had a right of contribution, but the defendant can always show that he, as between himself and the plaintiff, was not at all liable for the claim or was not liable equally with the plaintiff or that both being joint tort-feasors no contribution on public grounds should be enforced as between them, or for other reasons the suit could not be maintained. The cases which have been cited to us in support of the contention that no suit for contribution would lie at all, unless there was

some special equity in favour of the plaintiff, are: Mulla Singh v. Jagannath Singh ILR (1910) All. 585, Snput Singh v. Imrit Tewari ILR (1880) Cal. 720, Dearsly v. Middleweek (1881) L.R. 18 Ch. D. 236. It has to be borne in mind that in all these cases the contribution was sought as between the defendants in the former suit, and no case has been cited to us in which there had been a suit for contribution as between plaintiffs, and which had been negatived on the same grounds. Obviously there would be a difference between a case of co-defendants and that of co-plaintiffs. The defendants need not file a common defence. The plaintiffs, however, when they bring a suit, must sue on a common ground. Therefore it does not follow of necessity that the rule which would regulate the enforcement of contribution as between co-defendants should be applied to the case of co-plaintiffs also. The case of Mulla Singh v. Jagannath Singh ILR (1910) All. 585 is an example of a case in which the defence of the defendants was not the same That case, therefore, would not be a guide for the decision of the present case. The case in I.L.R., 5 Calcutta, however, need be mentioned only in so far that it recognizes the principle that where persons have acted under a bond fide claim of right, and had reason to suppose that they had a right to what they did, then they may have a right of contribution. In the present case, as would appear from the facts which we have stated above, the then plaintiffs were acting in the belief that they had a bond fide right to contest the attachment. It is further clear that they were all acting in concert for the benefit of all and that they were acting together through one set of attorneys. Each and every one of them had one and the same object and were acting in furtherance of it, and there was mutuality of interest as amongst themselves. The defendants whose main defence was based on the allegation that they knew nothing of this Bombay litigation have failed to substantiate their allegations, and it cannot be denied that they took as much part in it as the plaintiff did. Their defence has failed altogether. They tried to prove one of the exceptions mentioned in the case of Siva Panda v. Jujusti Panda ILR (1901) Mad. 599 and failed, Having regard to this we cannot but agree in holding that the present suit for contribution lies.

6. As regards the second point; under the stamp law all the executants were liable to pay the deficiency in stamp and the penalty, and having regard to the attitude taken up by the defendants in denying all the transactions regarding the Bombay suit, we do not think that the lower appellate court was wrong in making them liable for the proportionate amount of that sum. We think there is no force in this appeal and we, therefore, dismiss it with costs.