(1918) 10 AHC CK 0010

Allahabad High Court

Case No: None

Mannu Lal and Another		APPELLANT
	Vs	
Nelin Kumar Mukerji and Others		RESPONDENT

Date of Decision: Oct. 23, 1918

Citation: AIR 1918 All 21(2) : 48 Ind. Cas. 443

Hon'ble Judges: Henry Richards, C.J; P.C. Banerji, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. The facts out of which this and the connected appeals arise are somewhat complicated but it is unnecessary to state them at any great length. It appears that there were three brothers, Ghasi Ram, Shankar Lal and Mannu Lal. There was also their father Fauji Lal. Ghasi Ram appears to have been a man of considerable business capacity and intelligence and to have started a number of businesses in various parts of the province, which were upto a certain period at least quite successful. He associated his father and brothers as partners in some of the concerns without any contribution of capital on their part. All went well until one of the brothers Mannu Lal started a suit for partition against his brother Ghasi Ram, Ghasi Ram, instead of meeting this suit in a straightforward fashion and having all questions decided between himself, Mannu Lal and the other members of the family, got himself declared an insolvent. After a good deal of litigation (out of which probably the legal profession alone gained anything), a scheme for composition was put forward and eventually accepted by the creditors and the Court. The bankruptcy was annulled. Before this happened, however, a suit had been commenced by the Receivers against Shankar Lal and Mannu Lal in respect of their alleged liability, as partners, in some of the concerns, to Ghasi Ram and his son as the proprietors of certain other concerns in which Shankar Lal and Mannu Lal had no interest.

Notwithstanding the fact that the declaration of insolvency was annulled, the present suit was continued and the learned Subordinate Judge ''has made a decree in favour of the Receivers, plaintiffs in the suit.

2. The first point argued on behalf of Shankar Lal and Mannu Lal (the latter being represented by Mr. O''Conor, Barrister, and the former by Mr. Katju) was that the annulment of the insolvency rendered the suit by the Receivers unmaintainable and that on this ground alone the suit ought to have been dismissed. In our opinion this contention has no force. The defendants are alleged to be the debtors of Ghasi Ram and the other late insolvents Ghasi Ram makes no objection to the suit being maintained, (the objection that is raised is at the instance of the alleged debtors). There can be no doubt that the suit was properly instituted originally. There can be no doubt the suit could have been continued after the annulment in the name of the late insolvents, if not by the Receivers. It seems perfectly clear that if the debtors pay the amount found due either voluntarily or under stress of a decree, they will get a good discharge for their indebtedness to the late insolvents. We think under the circumstances that no injustice of any kind could be done to the defendants by the case being heard out on the merits.

3. The next point argued was that the suit should have been dismissed, because the'' suit as framed did not ask for an account of the transactions relating to a number of other concerns in which the parties were interested. Such pleas were raised in the Court below on behalf of the defendants and the Court admitted the equity of the defence by directing that the account should be taken in such a way that the liability, if any of the defendants would be finally decided after giving them credit for any sums which might be due to them from Ghasi Ram on account of the other concerns. We think that having taken care to prevent the possibility of any injustice being done to the defendants on account of original frame of the suit, the Court below was quite right in not dismissing the suit but directing that the accounts should be taken.

4. The nest point that was urged was that the Court below has assumed the correctness of the claim for Rs. 13,538 30 being due to the Cawnpore firm. It was contended that the Court ought not to have assumed that this sum was actually due but should have gone further into the accounts, and'' it was vaguely hinted that fictitious entries might have been made by Ghasi Ram in the Lakhimpur and Gola accounts at the time the suit was brought for partition by Mannu Lal so as to inflate the indebtedness of these two concerns to the Cawnpore firm. It was urged that the learned Judge himself thought that there were fictitious entries in these accounts. We have carefully considered the point and we cannot see that the learned Judge thought anything of the kind. We have even seen the evidence that was given on this particular point. One item that was suggested as a fictitious entry was a sum of Rs. 1,300 or there-abouts, damages which the Cawnpore house hid paid to Balli Brothers and bad charged against Lakhimpur. It appears that witnesses were

examined to show that a consignment of corn was sent by the Lakhimpur house to Balli Brothers but that this was done in pursuance of a contract entered into between the Cawnpore house and Balli Brothers. The contract being between these two firms, the Cawnpore house had necessarily in the -first instance to pay the damages for breach of contract, but it was quite right that the Lakhimpur house should have been debited with the payment of the damages if (as between the Lakhimpur house and the Cawnpore house) the grain was to come from Lakhimpur. If this item is to be taken as a specimen of the items suggested as fictitious, we think that there is very little weight or force in the allegation put forward on behalf of the defendants as to fictitious entries. We think that the Court below was justified in accepting the indebtedness as between the Cawnpore house and the Lakhimpur house and the Gola house of the sum mentioned above. It was argued that neither Shankar Lal nor Manna Lal could be liable for any sum, because according to the contract between them and their brother Ghasi Ram they were entitled to share in the profits but they were not to be bound to contribute to any loss. We are perfectly certain that there was no such contract, and we are quite certain that the learned Judge never intended to hold that such an absurd con tract existed. No doubt Shankar Lal and Mannu Lal contributed no capital and the shares in the partnership given to them were in lieu of their services, but as partners they were entitled to profit and liable to loss in proportion to their shares.

5. The last point was that the rate of interest, namely, nine per cent. was not the rate agreed upon. On this point we see no reason to differ from the finding of the Court below.

6. We think on the whole the case was carefully tried and justice done by the learned Subordinate Judge, We hope that the brothers may see their way to bring this litigation to a speedy determination without incurring further cost. The result is that the appeal fails and is dismissed with costs.