(1880) 04 AHC CK 0016

Allahabad High Court

Case No: None

Mohan Lal — APPELLANT

Vs

Ram Dial and Another — RESPONDENT

Date of Decision: April 22, 1880

Citation: (1880) ILR (All) 843

Hon'ble Judges: Robert Stuart, C.J; Straight, J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Final Decision: Disposed Of

Judgement

Robert Stuart, C.J.

On full consideration of this case and of the former appeal which was disposed of by Turner, J., and myself, I am not prepared to dissent from the conclusion arrived at by my colleagues. I am always unwilling to prevent the re-opening of an account where any material error can be shown, and I am not clear that Section 13 of the Procedure Code would bar such a proceeding in the present case, but the inconvenience of again opening up such an account as this would be so great and the result so uncertain (in no event, I believe, material) that I feel quite willing that the case should be decided according to the opinions recorded by the other members of the Court.

Pearson, J.

2. The remark of the High Court Bench in the judgment of the 10th August 1877, that "if the parties are again obliged to come into Court, the account must be again taken" must, in my opinion, be regarded as a mere obiter dictum which does not bind the Courts disposing of the present suit.

3. I am further of opinion that the Munsif''s finding in the former suit that Rs. 188-7-4 was due by the plaintiff to the defendants was a finding on a matter directly and substantially in issue between the parties in that suit, and has become final. In that suit not only was the recovery of the bond claimed on the ground that the

bond-debt had been discharged, but Rs. 20-15-7 were also claimed as having been over-paid, and, for the purpose of disposing of the latter claim, it was necessary to determine by taking accounts whether Rs. 20-15-7 as claimed were due to the plaintiff or whether on the contrary as pleaded by the defendants a larger sum was due to them.

Spankie, J.

4. I am disposed to hold that the account cannot now be re-opened. On looking into the former case it seems clear that the state of the account was really in issue. The plaintiff could not under any circumstances claim the return of the mortgage-bond, if there were still any sum due under it, and the defendants had contended that the entire sum had not been paid off. As this contention referred to the particular deed which the plaintiff sued to recover, the question whether the money had been paid or not had to be determined.

5. It is to be regretted perhaps that a remark in the judgment of this Court in the former case has induced the defendants to contend that the accounts are still open and can be gone into again. But the wording of Section 13 as amended is peremptory. I would, therefore, say that the account was settled by the Munsif''s judgment of the 24th November 1875, and cannot be re-opened.

Oldfield, J.

6. It appears clear to me that the decision of the Munsif dated 24th November 1875, has never been set aside and that it has finally decided that a sum of Rs. 188-7-4 was due by plaintiff to defendants on the several mortgage-bonds, and I hold that the accounts cannot now be re-opened.

7. The plaintiff in the former suit averred that a debt due to defendants on those bonds had been satisfied; and he sought to have one of those bonds returned to him and to recover a sum of Rs. 20-15-7, including interest, due to him after satisfaction of the debt due on the bonds. The defendants pleaded that a large sum of money was still due to them on the bonds. The question as to what was the unpaid balance was necessarily on these pleadings directly and substantially in issue between the parties, and the decision on it has become final and cannot be re-opened in a fresh suit.

8. I am altogether unable to agree in the remarks made by the learned Judges in their order dated 10th August 1877, in second appeal in that case, that the accounts could be re-opened in a fresh suit; and obviously those remarks cannot amount to a judicial determination that the accounts might be re-opened, for that was a point which could only be determined judicially at the hearing of any fresh suit which might be brought, and by the Court deciding such suit. Moreover, holding as the learned Judges did that no appeal lay from the Munsif''s judgment, they were powerless to make any decision on the merits of the case.

Straight, J.

9. I am of opinion that the objection raised by the plaintiff-appellant in his third ground of appeal should prevail, and that the finding of the Munsif of the 24th November 1875, is a bar to the defendants re-opening the accounts between themselves and the plaintiff. The claim of the plaintiff in his original suit was to recover the bond for Rs. 850, and to recover the Rs. 20-15-7, which he alleged had been improperly paid by his agent in excess of the amount due from him to the defendants for redemption of the bond. Two specific heads of claim were therefore included in his plaint, both of which the defendants were called upon to answer or in default judgment must have passed against them. As to the Rs. 20-15-7, not only did they deny it was due, but they alleged a much larger amount was owing to them by the plaintiff. Here therefore was a matter alleged by the plaintiff and expressly denied by the defendants, in respect of which the relief asked by the plaintiff was refused him, and not only that, for the decree went on to state that Rs. 188-7-4 was due and owing from the plaintiff to the defendants. The judgment of the Munsif was final except in so far as he could have altered it on review, and equally so that of the lower Appellate Court until it was disturbed by the decision of this Court, which had the effect of restoring the Munsif s findings and his determination of the whole case. The state of the litigation, then, was that the plaintiff''s claim was dismissed, and he was decreed to owe the defendants Rs. 188-7-4. "With great respect to the two learned Judges who decided the former appeal to this Court, it would appear as if they had entirely lost sight of the second head of the plaintiff''s claim and the provisions contained in Section 216 * of the Civil Procedure Code, so far as they affected the plea put forward by the defendants. Moreover, it appears to me that the terms of Section 43 of Act X of 1877 were imperative upon the plaintiff, in suing for the recovery of the bond, to claim the Rs. 20-15-7, for that was directly involved and had reference to the question whether the bond had or had not been satisfied. I take it to be a well-established principle that, unless there is any specific provision prohibiting a plaintiff from joining causes of action, he is bound to do so when they accrue at the same time and in respect of the same subject-matter. For a defendant is not to be subjected to the unnecessary expense and annoyance, either of defending or bringing a second suit, when all matters in difference between himself and a plaintiff can be disposed of in one. The state of the pleadings was such in the original suit between the now appellant and respondents, that the whole of the monetary dealings and accounts between them were opened up and evidence was taken and full consideration given to the proofs put forward on the one side and on the other. In the result the Munsif decreed Rs. 188-7-4 to be due and owing by the plaintiff to the defendants, and the latter appealed to the lower Appellate Court, with the result that the full amount of their counter-claim was admitted by the Judge. It is beside the question now before me to criticise the decision of the learned Chief Justice and Turner J., the effect of which was to leave the defendants entitled only to what the Munsif had decreed them. The plaintiff has accepted the Munsif''s

finding as binding on him, and has tendered the Rs. 188-7-4 to the defendants, who have refused to accept it. Hence the present suit. The remarks made by the two learned Judges in their judgment which are set out in the reference to the Full Bench are mere "obiter dicta," and can have no force or effect to alter the legal rights and disabilities of the parties.

*If set-off be allowed.

[Section 216:--If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Effect of decree.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.]