

(1878) 01 AHC CK 0017

Allahabad High Court

Case No: Special Appeal No. 1043 of 1877

Lachman Singh and
Another

APPELLANT

Vs

Sanwal Singh

RESPONDENT

Date of Decision: Jan. 2, 1878

Final Decision: Dismissed

Judgement

Oldfield, J.

The plaintiff in the former suit is badly drawn up, but the claim, so far as the mortgage-debt is concerned, was clearly for a declaration that the plaintiff was entitled to a fifth share in the sum lent under the mortgage-deed. The plaintiff stated the principal sum to be Rs. 5,600, and his own share in that sum Rs. 1,120. He did not sue to recover any portion of the debt. He claimed by right of succession, and his cause of action was the obstruction offered by the defendants to his possession of the family estate. It appears that at the time he instituted the first suit the defendant had realised the original debt with interest to the amount of Rs. 8,624. The plaintiff had no knowledge of this fact which was concealed from him; and he now sues to recover his share of that sum. We find that the defendant wrongfully appropriated the assets of the estate, and the Judge's finding is to the effect that he dishonestly concealed from the plaintiff information that he had realised the debt. We have thus the element of fraud introduced into the transaction and giving another cause of action to that on which the former suit was brought. We concur with the Judge in holding that, under the circumstances, s. 7 of Act VIII of 1859 cannot be applicable to bar this suit. We notice that a similar view was taken by this Court in *Bulwant Singh v. Chittan Singh*,^{*} and without endorsing or accepting all that is in that judgment, we consider that it expresses the course that we should adopt in this case. We dismiss the appeal with costs.

^{*} H.C.R., N.W.P. 1871, p. 27. For a case in which the omission was due to a bona fide mistake, and it was held, following *Buzloor Raheem v. Shamsunnissa Begum*. 8 W.R.,

P.C., 3, that the result was the same as if there had been an act of deliberate relinquishment, see [Ganes Chandra Chowdhry and Others Vs. Ram Kumar Chowdhry](#)