

(1924) 12 CAL CK 0008

Calcutta High Court

Case No: None

Fatema Bibi and Others

APPELLANT

Vs

Radha Syam Saha Banik and
Others

RESPONDENT

Date of Decision: Dec. 3, 1924

Citation: 87 Ind. Cas. 660

Hon'ble Judges: Ewart Greaves, J; Chakravarti, J

Bench: Division Bench

Judgement

Chakravarti, J.

This is an appeal by defendants Nos. 2, 4 and 5 and arises out of a suit brought by the plaintiff for recovery of the money due on khata accounts, said to have been advanced to defendant No. 3, the brother of some of the minor defendants and their mother.- It is the plaintiff's own case and the books show that the money was advanced to defendant No. 3. It appears that defendant No. 3 and all the other defendants are sons and the widow of one Moula Bux. The money was borrowed after the death of Moula Bux. The plaintiff sued defendant No. 3 and along with him the other defendants. The defence of defendants Nos. 2, 4 and 5 was that they did not borrow the money and in fact two of them were minors and that they, therefore, were not liable. The First Court dismissed the suit against these defendants and gave a decree against defendant No. 3 who had borrowed the money and who did not deny the loan. On appeal by the plaintiff the learned Subordinate Judge has not only made defendant No. 3, liable but with the other defendants also that is, the stepmother of defendant No. 3 and his two minor step-brothers. The sole ground upon which the learned Subordinate Judge decreed his claim against these defendants was that the whole family was jointly benefited by the advances which were meant for them and were enjoyed by all the members. Now it is quite clear that the judgment cannot be supported. This was a Muhammadan family no question of any presumption under the Hindu Law arising here. If defendant No. 3 chose to borrow money on his credit, he was alone liable for the money, simply and

not the minors and their mother who were given the benefit of that money by defendant No. 3. That does not create any liability of these defendants for the loan. It seems to us, therefore that the judgment of the learned Subordinate Judge is wrong and should be set aside and the judgment of the First Court restored with costs of this Court and the lower Appellate Court.

Greaves, J.

2. I agree.