(1911) 12 CAL CK 0001

Calcutta High Court

Case No: None

Ramdeo Prosad Singh		APPELLANT
	Vs	
Gopi Koeri and Others		RESPONDENT

Date of Decision: Dec. 14, 1911

Final Decision: Dismissed

Judgement

1. In this case the respondent obtained a decree against Ajodhya and Damodar, the grandfather and father respectively of the appellant, for recovery of possession of land, with mesne profits, costs and interest. The mesne profits were subsequently ascertained and decreed in 1002 against Damodar and Ajodhya. At that time all three members of the family were in existence. The respondent took out execution of the decree; and the case ultimately came up to this Court in appeal. The Court below had excluded certain evidence; and the case was remanded in order that an opportunity might be given to the appellant to show that the debt with respect to which execution was sought was not one for which he was liable. On remand the Court below has come to the decision that the appellant is liable; and this finding has been returned to this Court.

2. Two points have been taken on behalf of the appellant. The first is that, in any case, the decree-holder is not entitled to interest; and reference has been made to a passage at page 232 of babu Golap Chandra Sarkar Sbastri''s book on Hindu Law, in which it is said that the grandson is not liable to pay interest on the grandfather''s debts. It is argued that the dispossession which created the liability to account for mesne profits was effected by Ajodhya, the grandfather; that, therefore, it was be that was liable for the interest, and that that liability does not descend to the present appellant, who is his grandson. But it is clear that the decree for mesne profits was passed against both Damodar and Ajodhya, and there is nothing to show that the dispossession which formed the cause of action was not effected by Damodar just as much as by Ajodhya. In any case, it is clear that Damodar was liable for the whole of the interest and mesne profits decreed; and, that being so, the

passage we have quoted does not relieve the present appellant from a similar liability.

3. The second point taken is based, to a great extent, on the decision in Kishun Pershad Chowdhury v. Tipan Pershad Singh 34 C. 735 : 11 C.W.N. 613 : 5 C.L.J. 569. That was a suit by a mortgagee against a father and son, to enforce a mortgage; and the order was that the plaintiff should have the usual mortgage-decree against the share of the father and, if that was not sufficient, should be entitled to realise the balance by the sale of the share of the son in the ancestral property. It is argued that, following the principle of this decision, the decree-holder ought to proceed first against what was the share of Damodar and Ajodhya in the ancestral property at the time of the decree, and only in the event of that being insufficient, should be allowed relief against the interest that then belonged to the present appellant. The case, however, which has been cited was a suit upon a mortgage; and it seems open to considerable doubt whether, if it had been a case of a simple money-decree, the Court would have made any distinction between the interest of the father and that of the son. But, whether that be BO or not, we are certainly not prepared to hold that after the death of Damodar and Ajodhya there remains any such distinction between the interest which was vested in the appellant at his birth and interest that he acquired by survivorship, from Damodar and Ajodhya, as would justify the application of the case cited. The case, therefore, does not appear to us to sustain the contention of the learned Pleader for the appellant; and there is certainly no direct authority in favour of that contention.
4. No attachment of the property had been effected during the life-time of Damodar and Ajodhya.

5. It has been argued that the appellant is not entitled to take these pleas at the present time. But, as we have decided that they are not well founded, it is not necessary to give any opinion on that point.

6. The appeal will be dismissed with costs.

7. This decision will also govern Appeal No. 279 of 1908.

8. The hearing fee for both the appeals is assessed at five gold mohurs.