
(1869) 06 CAL CK 0004

Calcutta High Court

Case No: Regular Appeal No. 237 of 1868

Ganes Chandra
Chowdhry and Others

APPELLANT

Vs

Ram Kumar Chowdhry

RESPONDENT

Date of Decision: June 25, 1869

Judgement

Mitter, J.

1. We are of opinion that this suit is barred by section 7, Act VIII of 1859. The test in all cases of this description is whether the cause of action upon which the new suit is brought is distinct from the cause of action upon which the former suit was instituted. On referring to the former suit, we find that the claim then made was for certain monies said to have been misappropriated by the present defendant, during the time he was acting as the manager of the joint family; and his refusal to allow to the present plaintiffs their share of the said monies at the time of separation was stated to be their cause of action in that suit.

2. The cause of action in the present suit, as stated by the plaintiffs, is the refusal of the defendant to make over to them their share of certain paddy when the separation of the family took place in the month of Aswin 1269, B.S. It is clear therefore that the causes of action in both the cases originated in the refusal of the defendant to give to the plaintiffs their share of the properties realized by him as manager of the joint family.

3. The learned Judge of the Court below seems to be of opinion that the plaintiffs had by mistake omitted to include the present claim in the former suit, and he adds that this mistake was a bona fide one. But whether the omission arose from a mistake or otherwise it is not necessary for us to determine in order to apply the provisions of section 7 of Act VIII of 1859. This point was raised before the Privy Council in the case of *Moonshee Buzloor Ruheem and Jodonath Bose*, and it was distinctly held by their Lordships that whether a particular claim arising out of the same cause of action is voluntarily relinquished or otherwise, the result would be the same, and a second suit for

that claim would be barred by section 7, Act VIII of 1859. It seems to us clear therefore that the present suit is governed by the Privy Council decision above referred to; and if we were to hold otherwise, the consequences would be grievous indeed.

4. The manager of a joint Hindu family holds possession of various items of property, both real and personal, on behalf of the family,--Can it be contended for a moment that each member of the family has a separate cause of action for his share in each item of those properties? If such were the case, the manager would be harassed by as many different suits as there were different items of property under his management during the time the family remained joint. We are therefore of opinion that this suit is barred by section 7, Act VIII of 1859 and on that ground we dismiss it with costs.