

(1869) 05 CAL CK 0029

Calcutta High Court

Case No: Special Appeal No. 236 of 1868

Sriram Ghatak

APPELLANT

Vs

Brajamohan Ghosal
and Others

RESPONDENT

Date of Decision: May 5, 1869

Judgement

L.S. Jackson, J.

I am now of opinion that the decision of the lower appellate Court, in so far as it discharges the defendant Kasinath Roy from liability in this suit, cannot be supported. Section 337 of the CPC is one of a peculiar character, and requires to be carefully considered as to its application. The words are:--"If there be two or more plaintiffs, or two or more defendants in a suit, and the decision of the lower Court proceed on any ground common to all, any one of the plaintiffs or defendants may appeal against the whole decree, and the appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants." I think it now quite clear that the decree which may be the subject of such an appeal, must be one affecting in the same manner the whole of the plaintiffs or defendants, that is to say, a decree incapable of division, and upon which it would be impossible for a Court to find in one sense for some of the plaintiffs or defendants, and in the opposite sense for the other plaintiffs or defendants; for instance, where the suit relates to property in which all the plaintiffs or all the defendants are co-sharers or joint owners. A case of the kind lately arose before my learned colleague Mr. Justice Markby and myself, in which the party had set up a claim to certain lands as lying within a certain estate, and he commenced the suit against the party whom he described as being the owner of another estate in which those lands were said to be situated, as opposed to the plaintiff's statement. After the suit had been commenced, certain other parties came in representing themselves to be co-sharers of the original defendants, and they were made parties to the suit u/s 73 of the Code of Civil Procedure; and it so happened that the Court made a decree for the plaintiff as against some of the defendants, but dismissed the suit as against others; so that as the finding stood, it resulted that, as against certain of the parties, the land was found to be within a certain

estate, and against other parties, not to be within that same estate. That was a decree which was capable of being brought as a whole on appeal before the appellate Court, and it was accordingly appealed by some of the defendants, and the whole decree was reversed. In the case before us, on the other hand, the claim of the plaintiff is such that it was quite susceptible of being decreed against one, and dismissed as against another. If judgment were given for the plaintiff against both, their liability would be joint and separate, so that it would be at the option of the plaintiff to proceed separately in execution against either of the defendants. It would also be quite open to either original or appellate Court to find that one of the two defendants had, and the other had not executed the bond, and in that case the party found to have executed would be solely liable.

2. I think, therefore, that an appeal on the part of one of the defendants, so as to set aside the judgment of the Court imposing a separate liability to the whole demand upon another defendant could not be made, and also that the Court could not, on the appeal of one defendant, set aside the separate and sole liability of the other defendant, which remained in force under a judgment against which he had not appealed. I think, therefore, that the Judge had not before him any question regarding the liability of Kasinath Roy, and all that he could have done on Brajamohan's appeal was to declare that Brajamohan was not jointly or separately liable to the plaintiff.

3. I come to this conclusion upon the question before us simply as one of law. It is not necessary here to advert to the grounds upon which the Judge held that Brajamohan at any rate was not liable. It may be that, if we had to deal with those grounds, adverting to the evidence in the cause, we might have come to a very different conclusion from that to which the Judge has come. I think therefore that the special appeal must be allowed, and the judgment of the lower appellate Court, as regards the defendant Kasinath, be set aside with costs.

Mitter, J.

I entirely concur in the decree pronounced by my learned colleague. I do not think that the Judge had the power to reverse the decree of the Munsiff in favour of the defendant Kasinath, on the appeal of Brajamohan alone. I also think, that even if he had the power, he has not exercised it in this case in a proper and legal manner. The reasons in support of the first proposition have been so fully gone into by my learned colleague, that it is unnecessary for me to repeat them. The reasons in support of the second proposition were recorded by me at full length in my judgment of August last, and to those reasons I still adhere.