
(1870) 05 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 1231 of 1869

Pyari Mohan Guho and
Another

APPELLANT

Vs

Abhaychandra Roy
Chowdhry

RESPONDENT

Date of Decision: May 16, 1870

Judgement

Sir Richard Couch, Kt., C.J.

The first question in this case is whether the managing member of a joint Hindu family can be sued by the other members for an account. Now the members of a joint Hindu family are entitled to the family property, subject to such dispositions of it, as the managing member is entitled to make, either by virtue of the power which is given to him by law as manager, or of the powers that may be given to him by the consent of the other members of the family. Subject to the exercise of these powers, and to any disposition of any portion of the family property which may have been made by virtue of them, the other members of the family are clearly interested in that property. It appears to me that the principle upon which the right to call for an account rests is not, as has been supposed, the existence of a direct agency or of a partnership, where the managing partner may be considered as the agent for his copartners. It depends upon the right which the members of a joint Hindu family have to a share of the property; and where there is a joint interest in the property, and one party receives all the profits, he is bound to account to the other parties, who have an interest in it, for the profits of their respective shares, after making such deductions as he may have the right to make. That appears to me to be the right principle, and it is the principle upon which the English Courts of Equity act in the case of joint tenants and tenants in common, and not merely in cases of partners. I think, with due deference for Mr. Justice Markby's judgment, that he has put the right upon rather narrow grounds, and has not taken precisely a correct view of the grounds upon which it rests. It is also to be observed that his opinion, which is opposed to there being a right to a suit for an account, was not necessary for the decision of the case before him, and was so far an extra judicial opinion, for he did, under the circumstances of the case, decree an

account. His opinion is, therefore, not entitled to the same weight, as if it had been a direct decision in the suit upon a point in question. Then, as regards the judgment in the other case, it appears to me that it is not at variance with the proposition that a suit may be brought for an account. Mr. Justice Phear can better explain what he intended in his judgment in that case, but I certainly do not understand him to have laid down that there could not be a right to an account as against the managing member of a joint Hindu family. I think, therefore, that, if we look to the principle upon which Courts of Equity act in these cases, the principle upon which the right to an account is founded, this case comes within it; and then when I find that there has been a long course of practice, allowing these suits to be brought, certainly I should be extremely reluctant now to hold that such a suit cannot be brought, or to come to the conclusion that our allowing such a suit to be brought would, as has been urged, be destructive to the existence of joint Hindu families. I am not satisfied that it is so, and indeed I cannot see how it can be destructive to the existence of joint Hindu families, that the manager should be bound in equity and good conscience to account for his management, and should be liable to a suit if he does not do so. I would, therefore, answer the first question in the affirmative; and that being so answered, the other question must also be answered in the same manner. With regard to that, the opinion of Mr. Justice Phear is directly in point that a suit can be brought for an account in the case of a minor. He has expressly so stated in his judgment, and the opinion of Mr. Justice Markby to the contrary is only an extra judicial opinion. It is entitled to weight, and that was probably the reason for this case being referred, but it is not entitled to the same weight as if it had been an opinion which was necessary for the decision of the case.

2. With these answers, the case will go back to the Division Bench for a decision on the remaining questions arising on the appeal.

Kemp, J.

3. I concur in this judgment.

Jackson, J.

4. I am of the same opinion.

Phear, J.

5. As the judgment of mine in *Chuckunlall Singh v. Poran Chunder Singh* 9 W.R., 483 has been considered in some degree to afford a reason for this reference, I wish to say a few words explanatory of it, while I state that I entirely agree with the Chief Justice in the answers which he proposes to give to these questions.

6. Until I came into Court to-day, I had not the slightest idea that anything which I said in the case to which I have just referred could be interpreted into an opinion on my part that the managing member of a joint Hindu family could not be called to account by the other

members of the family. In that particular case, the plaintiff had, in fact, so far as could be seen from the evidence, taken as much part in the management and control of the joint property as the defendant; and he placed his cause of action, solely on the ground that the defendant was the karta of the family. I intended on that occasion to say that the mere circumstance of the one man being the karta of the family did not make him accountable to those other members of the family who took the ordinary part in the management of the property which an adult member, living in commensality with the others, must be supposed to take, in the absence of all evidence to the contrary. I endeavoured to guard myself at that time from being understood to say more than this; for certainly my own feeling, as an English lawyer, fairly conversant with equity and practice in England, is that every man, be he karta of a joint Hindu family or not, who manages the property of another person, or property in which another person is beneficially interested, upon the foundation of a trust or confidence between the two, is in a Court of Equity and good conscience accountable to the latter for the mode in which he does manage it, and for the profits which he may have made out of it. The principle which I understand the English Courts of Equity to act upon in these matters is simply this,--that a person who has the control of, and management of, another's property, upon the footing of any thing which amounts to a confidence or trust reposed in him by this other, shall not be allowed to abuse that confidence, and to make a profit out of his management, without the owner's consent; and inasmuch as the question whether or not a profit has been made, or what has been done, lies, under these circumstances, solely within the knowledge of the manager himself, a Court of Equity will make him disclose what he has done; in other words, will make him account for his administration of the property. It is the necessity for discovery, as the English lawyers term it, in order to protect the actual owner's right and interest which founds the jurisdiction of the English Courts of Equity in cases of this sort. I regret very much that I should have so inadequately expressed myself on the former occasion as to lead to the conclusion that I intended to favour the view which has been contended for here to-day, because, I think, if it had not been for that, there would hardly have been any occasion for this reference. Mr. Justice Markby's judgment did not amount to a decision. It is, I understand, nothing more than a dictum which was so little necessary to the determination of the particular case before him, that the learned Judge actually in that case decreed an account. It appears to me that there ought to be no hesitation on our part as to the answers which we must give to these questions.

Mitter, J.

7. I concur in the answers proposed; but as I was one of the Judges by whom this reference was made, I wish to say a few words as to the circumstances under which I thought myself bound to make it.

8. I did not make the reference in consequence of the decision of Mr. Justice Phear in *Chuckunlall Singh v. Poran Chunder Singh* 9 W.R., 483. I have distinctly stated in my judgment that that case was decided upon the ground that there was no evidence to prove that the defendant, who was sued for an account, was, in fact, the exclusive

manager of the joint family property; so that, properly speaking, it was not a case for account against a manager, but a suit by one of the two joint managers against the other.

9. The decision passed by Mr. Justice Markby, however, was the one which induced me to make this reference; and I must say that, in that case, the construction which Mr. Justice Markby put upon the decision of Mr. Justice Phear, just now referred to, was one of the principal grounds which led me to adopt that course. Mr. Justice Markby says in that decision that it was determined, in the case decided by Mr. Justice Phear, as well as another case decided by himself (Mr. Justice Markby) and the late Chief Justice, that the members of a joint undivided Hindu family have no right to sue the managing member of the joint family for account merely upon the ground that the person sued had the exclusive management of the joint family property.

10. This was a proposition which appeared to me to be erroneous, and I was, therefore, obliged to make this reference to the Full Bench. As to the questions themselves, I have nothing to add to what has been already observed by the learned Chief Justice and by Mr. Justice Phear.