

(1877) 06 CAL CK 0004

Calcutta High Court

Case No: None

Bheeka Lall

APPELLANT

Vs

Bhuggoo Lall

RESPONDENT

Date of Decision: June 28, 1877

Citation: (1878) ILR (Cal) 24

Hon'ble Judges: Prinsep, J; Markby, J

Bench: Division Bench

Judgement

Markby, J.

At first I was inclined to think that the decision of the Court below was not correct; but, after hearing the argument, I think that decision was right. The plaintiff having been in partnership with the defendant brought this suit upon the ground that there was partition in the year 1870, under which it was arranged that each should be entitled to a moiety of any decree which should be recovered, and he alleges that the moiety of a certain decree was recovered on the 4th September, 1871, and that, therefore under that partition he was entitled to a moiety of the sum so recovered.

2. The defendant answers that the plaintiff had already brought a suit in the year 1872 after this decree was recovered, in which he claimed, together with a number of other items, this very sum for which the present suit is brought. The plaintiff replies to that, that the former suit was not based upon any right which he had under the partition, but upon a general right to an account, alleging that the business continued subsequently to the partition; and lie maintains that that suit was dismissed solely upon the ground that the Court found that, by the partition, the business was put an end to. That is true. "But it is also clear that the plaintiff might, if lie had chosen in that suit, have gone on to say that even if he was not entitled to a share in this decree as an item of the general account which be claimed, he still was entitled to it upon the terms of the partition itself, whether the business continued after the partition or not, and he did not choose to do so. Therefore, this is a suit in which the plaintiff having two rights under which he could

recover this specific sum of money puts forward only one and claims upon that. And the question is whether he could then put forward a claim for the same identical sum of money under any other right subsequent to that suit. I think that question is conclusively decided by the Full Bench in *Dinobhundhoo Chowdhry v. Kristomonee Dossee* ILR 2 Cal. 152. It is quite true that that decision relates to a claim to land. But every argument by which it can be maintained that if a man sues for land he is bound to put forward every title of which he was possessed at the time when the suit was brought, applies with equal force to a suit for money. I think it is impossible not to hold after that decision that if a man sues for a specific sum of money, he must put forward every right under which he claims at that time that sum of money. Therefore, the decision of the Court below was right, and this appeal will be dismissed with costs.

Prinsep, J.

3. I am of the same opinion. It is quite clear that, in a former suit, the plaintiff made the money now claimed a portion of his claim against the defendant; and that, quite independently of the ground on which that suit was decided, he might and should have insisted on requiring a decree to be given to him at least for his share of the money collected under the decree which forms the subject of this suit. But, instead of contesting the decision of the Court which refused to give him such a decree by appealing against that order, he submitted to it, and he cannot now bring another suit to recover money which he could have obtained in that suit.