

(1933) 06 CAL CK 0027

Calcutta High Court

Case No: Appeal from Original Order No. 365 or 1932

Krishna Kinkar Mukerjee and
Others

APPELLANT

Vs

Tarak Nath Seal and Others

RESPONDENT

Date of Decision: June 14, 1933

Final Decision: Dismissed

Judgement

Mitter, J.

This is an appeal on behalf of the judgment-debtors against an order of the Subordinate Judge of Burdwan, dated the 30th June, 1932, by which he disallowed the objection of the judgment-debtors to the effect that the decree sought to be executed has been entirely satisfied. It appears that the Respondents who carry on a business under the name and style of the late Netai Chandra (Charan) Seal and another obtained a decree against the judgment-debtors for a considerable sum of money. They proceeded to execute the decree in respect of the amount due after certain payments had been made by their application which was filed on the 20th October. 1030. The amount for which the decree was sought to be executed came upto about Rs. 12,772-14. The judgment-debtors objected to the execution on the ground, amongst others, that one of the partners, Nagendra Nath Seal, by accepting a sum of Rs. 3,000 gave a release in respect of the entire decretal amount. The case made by the judgment-debtors was that in the month of Aswin, 1337, B. S., it was agreed in the presence of Nagendra Nath Seal and other partners that if the judgment-debtors paid a sum of Rs. 3,000 in a lump, they would accept the decree in full satisfaction of the dues of the defaulted kists. It was further agreed that in case the judgment debtors paid in two instalments, one at the time and the other a year after, then they should have to pay a sum of Rs. 4,000 before the decree could be entirely satisfied. The case of the judgment-debtors is that it was in pursuance of this arrangement between all the partners that Nagendra gave a release after receipt of payment of a sum of Rs. 3,000. The Subordinate Judge has on the evidence come to the conclusion that this sum of Rs. 3,000 was paid to Nagendra

and this finding has not been questioned in this appeal. But the Subordinate Judge has come to the further conclusion that Nagendra had no express authority to accept Rs. 3,000 in full satisfaction of the dues. It was contended before him that under the provisions of sec. 251 of the Indian Contract Act, Nagendra, as a partner, had authority to give the release and thereby bind the other partners or rather the firm. But this objection was overruled, although the Subordinate Judge came to the conclusion that there was no fraud or collusion between Nagendra and the judgment-debtors and no such fraud has been established in this case. In this view the Subordinate Judge reached the conclusion that by payment of Rs. 3,000 to Nagendra, Rs. 3,000 have been satisfied out of the dues under the decree but the balance under the decree still remains unsatisfied. He, therefore, directed that execution should proceed for the balance. Against this order the present appeal has been brought and it has been contended before us that the Subordinate Judge has committed an error of law in holding that in the absence of fraud or collusion between one of the partners Nagendra and the judgment-debtors, it was not open to Nagendra to give a release in respect of the balance so as to bind the firm. In support of this contention reliance has been placed on several authorities and in particular we have been referred to a passage in the well-known text-book of Lindley on Partnership, 9th Edition, at page 203. The learned author states the position in law as follows :--

A covenant by one partner not to sue for a partnership debt does not amount to a release of that debt by the firm, although a covenant by all the partners not to sue would be equivalent to a release and a release by one partner operates as a release by the firm.

This last proposition, viz., that a release by one partner is in point of law a release by all, is strongly illustrated by those cases in which attempts have been unsuccessfully made by one partner to set aside a release given by a co-partner without his consent.

2. Lord Lindley in support of this proposition cites authorities of English cases to which reference has been made in the text book. It can hardly be gainsaid that it is an accurate statement of law and that this was also the view taken in Indian Courts will appear from the decisions in the cases to which reference has been made, namely, *P. L. A. Palaniappa Chettiar v. V. L. A. R. Veerappa Chettiar* I. L. R. 41 Mad. 446 at p. 453 (1917) and *Baikunta Nath Chakrabarti v. Hara Lal Pal Chowdhury* 13 C. L. J. 234 at p. 236 (1911). Perhaps the Subordinate Judge has somewhat broadly stated the law when he said that even in the absence of fraud and collusion it is not competent to one of the partners to give a release in respect of the partnership debts. But this case has to be decided on the evidence which has been adduced in this case to the effect that there was a meeting amongst all the partners when it was agreed that on payment of Rs. 3,000 in the lump, they would accept the decree in full satisfaction of their dues. This story of such an agreement amongst all the

partners has not been accepted by the Subordinate Judge. It appears clear from the cross-examination of one of the judgment-debtors, Satya Kinkar Mukherjee who is witness No. 1 for the judgment-debtors that Nagendra Babu sent words to him to come to all the partners for the decree money. In this case no deed of partnership is forthcoming. But it appears clear from the statement of the judgment-debtors in the passage to which I have just referred that he knew that the partner's authority was restricted so far as the question of release was concerned, for according to the case made by the judgment-debtors it appears clear that nothing could be settled with reference to the release, except in the presence of all the partners and by consent of all the partners. The case, therefore, falls within the rule of law which has been formulated by Sir Frederick Pollock and Sir Dinshaw Fardunji Mulla in their well-known Commentary on Indian Contract Act under sec. 251 of the said Act in the passage to be referred to presently. Having regard to the fact, namely, that the judgment-debtors had the knowledge that the authority of one partner was restricted so far as the matter of release was concerned, for otherwise there was no point in the meeting of all the partners for the consideration of this question, it seems to us that the case falls within the Exception of sec. 251 of the Act which shows that if it has been agreed between the partners that any restriction shall be placed upon the power of any one of them, no act done in contravention of such agreement shall bind the firm with respect to persons having notice of such agreement; and as has been pointed by the learned authors " that it is obviously not just that a third person should be able to hold the firm liable for an act of one partner which he knew to be unauthorized ; and such knowledge is necessarily conveyed by notice that the partner's authority is expressly restricted, in that particular, by the partnership agreement." As has already been pointed out there is no agreement in this case; but as the circumstance discloses, the judgment-debtor's (Satya's) own evidence shows that there was such restriction, and he knew of it.

3. In this view the appeal fails and must be dismissed with costs. We assess the hearing-fees at two gold mohurs which will be divided equally between the two sets of Respondents, namely, Respondent No. 2 and Respondents Nos. 1 and 3. The receiver Respondent is not entitled to any costs.

Henderson, J.

I agree that this appeal must be dismissed.