

(1914) 10 CAL CK 0005

Calcutta High Court

Case No: None

Seth Ramlal, since
deceased (now
represented by Seth
Sheolal) and Another

APPELLANT

Vs

Narsingdas, since
deceased, and Others

RESPONDENT

Date of Decision: Oct. 22, 1914

Final Decision: Dismissed

Judgement

Lord Dunedin

1. The claim in the present suit arises out of the following circumstances :--

Two parties were interested in property which they held in partnership, and one of them, called Lakmichand, brought a partition suit against his partner Bhajanlal, following on a dissolution of the partnership in which the Court gave effect to a compromise which the two parties themselves had effected. The judgment which was pronounced by the Court in that case is to be found at page 29 of the Record. There had been a mortgage granted by Bhajanlal in favour of a person called Narsingdas, and that mortgage purported to convey, as security for the debt which was thereby constituted, the whole of the partnership property.

It was a moot point, however, between the partners as to whether the partner who executed that mortgage had in truth any right to subject the whole of the partnership property to the debt, or whether he was not in fact only able to burden his own share. This being so, one of the terms of the arrangement which was made binding between the parties in the judgment pronounced was that the Plaintiff, who is now represented by the present Defendants and Appellants, should pay to Narsingdas, that is, in other words, to the mortgagee, Rs. 8,200 and that the Defendant Bhajanlal who is now represented by the present Plaintiffs and Respondents, should free the other parties' portion of the property from the

mortgage.

2. It is admitted that the Defendants, that is to say, the present Appellants, never did pay the Rs. 8,200 except to the small extent of Rs. 200, to Narsingdas. Narsingdas thereafter brought a suit to make good his mortgage, and in the course of that suit it was found eventually by the highest Court, by this Board, that truly the mortgage only bound Bhajanlal's share and not the whole partnership property.

3. Payment to the mortgagee Narsingdas was effected by the sale under that suit of Bhajanlal's property, and the result, of course, was that he had to pay the whole of Narsingdas' debt. Inasmuch as the present Appellants had never paid the Rs. 8,200 to Narsingdas, it is quite evident that Bhajanlal had to pay Rs. 8,000 more to Narsingdas than he should have paid. Accordingly the present Respondents sue for contribution.

4. The defence really comes to this, that the payment which is stipulated for in the judgment which was the result of the compromise is a payment which is conditional upon the other party doing his share. It is said that Bhajanlal never did free the other part of the property from the mortgage because that was freed not by anything done by him, but by the judgment of the Privy Council in the suit which has already been mentioned.

5. Their Lordships are of opinion that the case is quite correctly put by the learned Judicial Commissioner from whose judgment the present Appeal lies. Speaking of the mortgage debt due to Narsingdas, he says :

It was a disputed point as to whether Bhajanlal should pay all or only half of it, and that dispute was compromised by an agreement which necessarily admitted that it was a partnership debt whereof the Defendants (in this suit) on that date were liable to pay Rs. 8,200. From that moment the Rs. 8,200 became a debt due by the Defendants to Narsingdas for the purpose of adjustment between the ex-partners of the dissolved partnership.

6. Their Lordships think that that is the true key to the case, and that it is out of the question now for the present Appellants to try to get out of the compromise by saying that if the Privy Council case had been then decided they would have found themselves free of the liability without entering into the undertaking to pay Rs. 8,200. They are bound by that compromise, however foolish it may have been. They might have paid the money direct to Narsingdas; they did not pay it, and the Respondents had in consequence to pay it to him. Accordingly, to make good the terms of the compromise, the Appellants must now pay it to the Respondents. Their Lordships will accordingly humbly advise His Majesty to dismiss the Appeal with costs.