

(1928) 09 CAL CK 0018

Calcutta High Court

Case No: None

Chhattoo Lal Misser and
Company

APPELLANT

Vs

Naraindas Baijnath Prasad

RESPONDENT

Date of Decision: Sept. 4, 1928

Citation: 121 Ind. Cas. 403

Hon'ble Judges: Remfry, J

Bench: Single Bench

Judgement

Remfry, J.

This is a proceeding under Order XXI, Rule 50 (2), in which the plaintiff firm, having obtained a decree against a firm in its firm name, seeks to make one Bhagwatdas liable under that decree, on the allegation that he is a partner in the said firm.

2. Bhagwatdas was served with a summons in the suit and entered appearance under protest, seating that he was not a partner in the firm and was a ward under the Court of Wards of the United Provinces. The decree was made in his absence, for, according to the practice of this Court, he could not appear to contest the liability of the firm unless he admitted that he was a partner.

3. He now seeks to defend this proceeding on two grounds, first that he is a ward under the United Provinces Court of Wards Act, 1912, and that this Court is not competent to hear a case against him or to decree it unless the provisions of that Act have been observed and, secondly, that he was not a partner in the defendant firm.

4. A preliminary objection was taken on the ground that in a proceeding under Order XXI, Rule 50 (2) the only question was yes or no--was the defendant a partner in the firm.

5. Now, it appears that in certain judgments observations have been made which seem to support this contention, But in Davis v. Hyman and Co.. (1903) 1 K.B. 854 :

72 L.J.K.B. 426 : 51 W.R. 598 : 88 L.T. 284 : 19 T.L.R. 348 Sterling, L.J., said that the question was a general one of liability and that any proper defence could be raised and in *Jagat Chandra Bhattacharyya v. Gunny Hajee Ahmed y, Buckland, J.* appears to have adopted the same view, I do not think the observations of the then Chief Justice were intended to mean that the only possible question was whether the defendant was a partner or not. Similar remarks in *Weir and Co. v. Mc Vicar and Co.* (1925) 2 K.B. 127 : 94 L.J.K.B. 786 : 133 L.T. 428 by Scrutton, L.J., in my opinion, were not intended to disagree with Sterling, L.J.'s view--and if they were, I must follow Sterling, L.J., on a point of this kind.

6. It has long since ceased to be the province of procedure to exclude defences, and it is to be presumed that no defence is excluded unless that is the only possible construction of a rule. The common sense of the matter is that the party sought to be charged can raise any personal defence and is generally precluded from challenging the decree, though if that were obtained by collusion and fraud, that would not bind him, for he can only be bound, if found to be a partner, by admissions made by his partners and their conduct within the scope of their authority as such.

7. Therefore, as the defendant merely seeks to raise a personal defence that is legitimate.

8. The next question is whether the fact that he is a ward, under an Act passed by the Local Legislature of the United Provinces, affords a defence or bar to this application.

9. That Local Legislature has no jurisdiction to legislate save for its own provinces and the Act does not purport to extend beyond those provinces. It is not contended that the Act alters the status of a ward or affects his capacity to contract. In my opinion, this Act, like the Acts of many other Local Legislature dealing with the local Courts of Wards, can have no effect beyond the jurisdiction of its own Legislature.

10. It is contended that the validity of this Act is preserved by Section 4 of the Civil Procedure Code, but that section gives a local Act local validity and special procedure validity in its own sphere. The Act does not purport to affect any Court save the Courts in the United Provinces, and the result is that this Court is asked not to enforce the Act, but to extend it beyond its declared sphere. It may be that if execution is sought in any Court to which the decree, if any, is sent for execution, that Court may be bound by the Act and it seems to me that this is the intention of the Act, and that the Act is within Section 4 of the CPC for that purpose.

11. But, in my opinion, no Local Legislature can prescribe procedure for any Court beyond its territorial jurisdiction and any Act passed by a Local Legislature for its own Courts cannot be enforced beyond those territories. As far as this Court is concerned, the Act is in the same position as the legislation of a foreign country, and though such legislation can define the status of its own citizens and such status will

be recognised by foreign courts, when the actual status of a person is not affected the Municipal Law of a foreign country cannot control or affect in any way the procedure of a Court of another country. As Bhagwatdas has the status of an ordinary British subject, he cannot be allowed to set up the special procedure of a local Act as a defence to this proceeding.

12. It is unnecessary to decide whether this proceeding is a proceeding in execution, though it seems to me that as there is no decree at present against Bhagwatdas, the contention that this is a proceeding in execution is untenable. I find that the Act pleaded is no bar to these proceedings.

13. This issue was tried first as that course seemed more convenient and the second issue as to whether Bhagwatdas is a partner in the defendant firm remains to be tried.

14. The plaintiff will have the costs of the hearing of this issue, on scale No. 1 against the defendant Bhagwatdas.