(1911) 06 CAL CK 0032

Calcutta High Court

Case No: Appeal from Original Decree No. 69 of 1910 (Suit No. 297 of 1908)

Jalim Singh Srimal		APPELLANT
	Vs	
Choonee Lall Johurry		RESPONDENT

Date of Decision: June 19, 1911

Final Decision: Dismissed

Judgement

Jenkins, C.J.

This appeal arises out of a suit on an adjusted account, brought to recover a sum of Rs. 22,968 with interest. The Plaintiff, Choonee Lal Johurry, is the son of Hira Lal Johurry who died on the 29th of May 1905. His case, as it now stands, is that his father, Hira Lal Johurry, was a partner with the Defendant, Jalim Singh Srimal, in two businesses that of Hira Lal and Jalim Singh and that of Jalim Singh Bhicum Chand both in jute, though of different classes. Without going into details as to these businesses it is enough to say that in March 1905 they were dissolved. The Plaintiff''s case is that on the 2nd of April 1905 a basis of settlement was formulated between his father, Hira Lal, and the Defendant, Jalim Singh, and further that on the 20th of August 1906 there was a final adjustment on which the suit rests. Mr. Justice Fletcher passed a decree in the Plaintiff''s favour. From this decree the present appeal is preferred, and I see that eminent Counsel has certified that there are no less than fourteen good grounds of appeal against that judgment. Now, the facts really are very brief and very simple. The rival cases are these. It is said on the part of the Plaintiff that there was this basis of a settlement, to which I have alluded, on the 2nd of April 1905, and there was an adjustment on the 20th of August 1906. The Defendant''s case was a negative to this : and, from the judgment of the learned Judge it appears that " the learned Counsel for the Defendant during the trial attempted to make the case that there never was any adjustment of the accounts between the parties but that the parties were content to rest upon the basis of settlement and that the Defendant had paid substantially all that was due from him. This was the case attempted to be made until the Defendant himself gave evidence, he being the last witness called during the trial; so far from the Defendant

supporting the case that was being attempted to be made by his Counsel he stated in express terms that an adjustment of the accounts did take place, but that it took place on the 19th March 1905, and that the amount found due from the Defendant was Rs. 9,000 which he had practically fully paid." We come then to this, that it is common ground that there was an adjustment and that there was a basis of settlement which preceded that adjustment; and, what we have to determine is which of the two stories is true, that of the Plaintiff who fixes the basis on the 2nd of April 1905 and the adjustment on the 20th of August 1906, or that of the Defendant who places the basis of settlement on the 18th of March 1905, and the adjustment on the 19th of March 1905, the day following. Now the determination of this matter is a question of fact, to be determined principally on an appreciation of the oral evidence adduced before the Court. The learned Judge came to certain clear conclusions. He did not accept the view that there was this basis of settlement on the 18th of March. In support of his contention that there was this settlement the Defendant put in evidence a document Ex. 13. The learned Judge has dealt with the document and has expressed the opinion that it was not a genuine document. The genuineness of this document has been discussed with considerable detail before us, and the conclusion to which I come is that though I hesitate to say that it has been established that the document is not genuine, I have no hesitation in affirming that the document has not been affirmatively established. So again as to the date of adjustment : The learned Judge is clear that the adjustment took place on the 20th of August 1906. The conclusion at which he arrived that the settlement and the adjustment in March 1905 had not been proved has a material bearing on the question whether the Plaintiff''s version as to the adjustment in August 1906 should not be accepted as correct: and, holding the view I do as to that adjustment I can see no reason for dissenting from the view of the learned Judge that there was the adjustment on the 20th of August 1906, on which this suit is based. It is true that the Plaintiff does not in his plaint specifically mention the 20th of August, and in that respect, no doubt, there is want of precision in the pleading. But at the same time the adjustment is pleaded in such a manner as to make it clear that it was after the 6th of August 1905 : for, it is said that "subsequently to that date the accounts of the said business were adjusted in Calcutta by and between the Plaintiff and the Defendant." I, therefore, think that not only was the learned Judge justified, on the evidence, in coming to the conclusion he did, but further that there was nothing in the pleading that should have restrained him from coming to that conclusion : so that on the merits the Plaintiffs would appear to be right, and, indeed, as has been pointed out by Mr. Das in the course of his argument, the Defendant has not ventured to suggest that if there was an adjustment in August 1906, the amount claimed by the Plaintiff on the basis of that adjustment as the result of the partnership dealings was not the correct amount.

2. Then it has been urged that the Defendant has a grievance and that the learned Judge ought to have held that there was a total variance between the pleading and

proof in this case. I do not agree with this contention. The cause of action was the adjustment. No doubt, as I have said, the actual date of the adjustment was not specified; I have dealt with that fact. But so far as there is a variance between what is alleged and what is proved, it does not relate to an integral part of the cause of action, nor can I find any trace that the Defendant has been really hampered in his defence by the pleading in the case-so far as there was an uncertainty as to the date of adjustment it was very simple and very easy for the Defendant to have had this date specified had he so desired.

3. Then I come to the question of limitation. It is urged that as this suit was not instituted until the 6th of April 1908, it is out of time, at any rate as to one of the two sums which go to make up the total claimed. These two sums are Rs. 12,966-2-6 and Rs. 10,001-13-6. The argument is as to the former of these two sums.

4. Now, it has been brought to. our notice by Mr. Das that until the case came to this Court there was no suggestion that these two sums did not stand together, and a perusal of the pleading and of the judgment appears to me to amply support his statement. It is conceded that the contention cannot succeed as to the Rs. 10,001-13-6. I, therefore, would be slow to hold that he could now succeed as to the other sum for, as has been urged before us, the fact that the two sums were treated as standing together has influenced the Plaintiff as to the line of. proof he deemed requisite. He might have adduced further proof had it been brought to his notice that it was necessary for him to deal separately with each of these two sums and the circumstances relating to them in such a way as to meet this particular objection. The settlement of account contained in the ledger and set forth at page 92 of the printed paper-book has been brought to our notice, and I see no reason for doubting Mr. Das''s assertion that it might have been within the power of the Plaintiff to have adduced evidence to show that with regard to those several sums set forth there resulting in the balance of Rs. 12,966-2 6, there were materials to show that there was the cross demand which was necessary for the purpose of meeting the plea of limitation. Beyond that it is asserted by Mr. Das- and no real attempt has been made to meet this assertion-that the item of Rs. 15,950 does constitute a sufficient cross demand for the purpose of affording an answer to the plea of limitation that has been raised in relation to this particular amount, I am the more ready to believe in this from the fact that this adjustment of account really arises out of partnership relations which would naturally give rise to such a position. It appears to me that the Plaintiff has succeeded in showing that the suit is one on an adjusted account which entitles him to claim that by virtue of that adjustment, there was a new cause of action originating on the 20th of August 1906; and in that view it is clear that there is no bar of limitation to the Plaintiff''s claim, and that is so whether the article that should be applied be Art. 115, as would seem to be the view that was taken in Nobin Chandra Sahoo v. Suroqp Chandra Dass 6 W. R. 328 (1866), or Art. 120, as may possibly be the view to be deduced from the authority, Umedchand Hukumchand v. Bulakidas Lalchand 5 Bom. H. C. R. 16 at p. 20 (1868). It

is not necessary for me to notice the argument that was advanced in Mr. Mitter''s opening, but practically abandoned in the course of his reply, as to whether the terms of Art. 64 of the Limitation Act were not such as to have annulled the right to sue on an oral adjustment of account, for, it has been decided repeatedly that the function of the third column of the second schedule of the Indian Limitation Act is not to define causes of action but to fix the starting point from which the period of limitation is to be counted. In my opinion the decree of Mr. Justice Fletcher is correct, and we must dismiss this appeal with costs.

Woodroffe, J.

I agree.