(1867) 04 CAL CK 0004

Calcutta High Court

Case No: None

Sreeputty Roy		APPELLANT
	Vs	
Loharam Roy and Others		RESPONDENT

Date of Decision: April 15, 1867

Judgement

Sir Barnes Peacock, Kt., C.J.

According to the case stated by the Judge, a suit was brought against twenty-three defendants (of whom the present plaintiff was one) for having wrongfully constructed a bandel and caught fish within the limits of a julkur belonging to the plaintiff in that suit. A decree was given against them all jointly for the sum of Rs. 204-8; and the plaintiff''s property having been attached in execution of that decree, he paid the whole amount. He now sues all the other defendants for contribution, deducting his own share, namely, Rs. 8-14-6, being a one twenty-third share. One question is, whether the plaintiff is entitled to sue those defendants for contribution or not. The Judge of the Small Cause Court has expressed his opinion that the plaintiff cannot maintain a suit for contribution, and has dismissed the suit, subject to the orders of the High Court, and he has referred the question whether the action will lie or not. He says: "In the present case, the original act, the construction of bandels within Bindabun Chunder Sircar''s julkur, was pronounced by the Civil Court to be an act of illegal trespass, and no person implicated therein can therefore have any claim for indemnity for any loss sustained by him in the prosecution of his illegal design."

2. The case has been referred to a Full Bench in consequence of conflicting decisions as to whether a suit for contribution can be maintained in a Small Cause Court. For the reasons given this day in our judgment in the case of Rambux Chittangeo v. Modoosoodhun Paul Chowdhry Ante, p. 675, we are of opinion that there was no implied contract for contribution, and most certainly that there was no joint contract on the part of the twenty-two defendants. Consequently, the Small Cause Court had no jurisdiction, and the Judge was right in dismissing the case.

3. It has not, however, been found by the Judge of the Small Cause Court that the twenty-three defendants were committing an act which they knew to be illegal, or that they were doing an immoral act, or that they were attempting to catch fish in the water knowing that they had no right to fish in it. Under these circumstances, they were not doing a wrong in the moral sense of the word, although they were doing an act which, according to the decision of the Court, infringed the plaintiff''s right. If they acted under a fair claim of light, there is no reason why one of the defendants should have to pay the whole of the damages, and not have a right of contribution against the other. But it does not necessarily follow that because there were twenty-three defendants each of them ought to pay one twenty-third of the whole amount of the decree. It may be that the plaintiff in this action derived no benefit from the erection of the bandel, or it may be that he employed the others to erect it and derived the whole benefit of it. If the plaintiff was merely a servant carrying out the directions of the other defendants, he ought not, as between him and the other defendants, to be liable for any portion of the damage. If, on the other hand, all the other defendants were acting as his servants and under his directions, and he was the person who claimed the right of fishing and derived all the benefit of the trespass, he ought to pay the whole of the damages.

4. We cannot say upon the finding in this case, whether the plaintiff was entitled to contribution or not. All that we can say is that the plaintiff was not necessarily precluded from recovering contribution merely because the damages for which the decree was given wore caused by a wrong, in the legal sense of the word, done to the plaintiff. If the Judge had jurisdiction in the case, we should inform him that he ought to try the case upon the merits, and to ascertain whether, having reference to the circumstances under which the trespass was committed, the parts which the defendants respectively took in it, and the benefits, if any, which they respectively derived from it, they ought to contribute any, and what, portions of the damages recovered against them. If they were all jointly concerned in committing an act which they knew to be illegal, the plaintiff is not entitled to contribution.

5. It has been stated to us that only five of the defendants committed the trespass; that they alone were sued; and that the others intervened, because they claimed an interest in the fishing. If such were the case, those defendants who intervened did not, merely by their intervention, lender themselves liable for the damages which had been previously sustained, nor did they thereby become liable to contribute.

6. In Merryweather v. Nixan 8 T.R., 186 S.C., 2 Sm. L.C., 6th Ed., 481, it was held that no action for contribution was maintainable by one wrong doer against another, although the one who seeks contribution may have been compelled to satisfy the whole damages. But Lord Kenyon laid it down as a general principle, that the decision would not affect cases of indemnity in which one person may employ another to do an act not unlawful in itself. The general rule has been greatly modified in later oases. The true principle was laid down by Best, C.J., in Adamson v.

Jarvis 4 Bing., 66 in which he said that the rule was confined to cases whore the person seeking redress must be presumed to have known that, he was doing an unlawful act. The Judge of the Small Cause Court seems to have considered that the parties were bound by the judgment of the Court which pronounced the decree that the act was an illegal act of trespass, But that judgment had reference to the case between the plaintiff and defendants in that suit. It does not show that the parties to the present suit knew that the act was illegal. It was sufficient in that suit that it was illegal or unjustifiable, it was not necessary to determine whether the parties knew it to be illegal, and that point was not determined See next case.