
(1874) 05 CAL CK 0007

Calcutta High Court

Case No: None

Haran Chandra
Mookerjee

APPELLANT

Vs

Nandagopal Muttylall
and Another

RESPONDENT

Date of Decision: May 14, 1874

Judgement

Sir Richard Couch, Kt., C.J.

We think this is not a case where the demand is for part of a distributive share under an intestacy or a legacy under a will. What is intended by these words in s. 32 of Act IX of 1850 is where the person entitled to a share of property in the case of intestacy is bringing a suit against the person who has the administration of the property; or in case of a legacy, where the suit is brought for the legacy against the person who has the administration of the property, whether as executor, or, in this country, in some other capacity, and is liable to pay the legacy. Here the liability of the defendant is not a liability of this description. It arises from a contract which was made between him and Mongala Debi when the money was deposited. There was no express contract, but there would be an implied contract to repay the money. The defendant appears to have been acting in a capacity similar to that of a banker to whom money deposited is considered as lent. It may be that on the death of Mongala Debi, the persons who became entitled to the money can have the benefit of the contract between her and the defendant, and sue the defendant to recover the money. But they will sue upon a liability arising from the loan, and not on any liability to pay over the share of the property of the deceased person, or to pay any thing as a legacy. It appears to us that this is a case in which the defendant had a right to have joined in the suit against him all the persons who claim to be entitled to receive the debt, which debt may, after the death of Mongala Debi, be said to be due to the heirs of her deceased husband. On that ground we think that the judgment should be for the defendant. It is not necessary for us to answer the other question which has been submitted to us. The judgment will be for the defendant with costs of the suit in the Small Cause Court and the ordinary costs allowed of reserving the question, and otherwise

arising thereout or connected therewith.

(1) The learned Counsel was allowed to begin on his suggesting that it would be more convenient that he should do so, as the judgment of the Small Cause Court had been given in favor of the plaintiff.