
(1879) 06 CAL CK 0011

Calcutta High Court

Case No: None

Goury Pershad

APPELLANT

Vs

Sunkur Pershad

RESPONDENT

Date of Decision: June 2, 1879

Citation: (1880) ILR (Cal) 321

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Broughton, J.

The plaintiff (respondent) sued his brother the defendant (appellant) in this suit for Rs. 3,065 principal and interest, and being, as he describes it, the amount of debt due by the defendant and paid in excess by the plaintiff. The plaint is defective in so far that it omits to state that the money was paid for the defendant at his request, but if it appeared that the money was in fact paid for the defendant at his request, express or implied, that defect might be remedied.

2. The case for the plaintiff is as follows: He says that when he and his brother were joint, that is to say, before September 1870, when they separated, he borrowed the money on bonds from a money-lender, and spent it for the joint benefit of himself and his brother; these bonds were signed by the plaintiff alone, and the money-lender sued him, and got a decree upon one of them. In order to avoid execution of this decree, and to retire another bond upon which no suit had been brought, the plaintiff came to an arrangement with the money-lender, and executed, on the 16th March 1874, a fresh bond to cover both debts. It is for the half of the debt on this last bond with costs and interest, including future interest to accrue upon it, that the suit has been brought.

3. The Court of Original Jurisdiction disallowed the future interest, and the amount of that one of the original bonds upon which no decree had been obtained, finding that the bond had been paid off by the defendant himself, and the Subordinate Judge gave the plaintiff a decree for 1,788-0-8, with interest, from the filing of the

plaint to realization, at 6 per cent., and costs-proportionate to his success in the suit.

4. The Court held, that the plea of limitation taken by the defendant could not be maintained, as the cause of action arose on the 18th of March 1874 when the last bond was executed, and the suit was instituted on the 16th of March, 1877, within three years. The defendant had pleaded that, at the time of the separation between the two brothers, the plaintiff took upon himself the liability to pay certain debts, and that this debt was one of them; but the Court held that he had not proved this, and in the absence of proof, the Court presumed that each brother must be held to have taken upon him the liability to pay half of the debts. It was held, that the debts for the payment of which the money was originally borrowed were presumably joint debts, no proof to the contrary having been offered. It was also held that the fact that the bond was executed after the separation was no defence to the suit, but that the character of the original debt must be looked to, and as it had been already decided to be a joint debt, the plaintiff was entitled to recover a moiety from the defendant, and that he was so entitled notwithstanding the fact that he had not paid the debt upon the bond of 1874.

5. Both parties appealed from this decision to the Judge of Tirhoot, who dismissed both appeals.

6. The defendant now appeals from the decree in appeal, and contends that the question, whether the suit was barred by the law of limitation was improperly decided against him, and that the onus was upon the plaintiff to show that the debts, to pay which the original loan was contracted, were joint debts.

7. It appears to us that both these points ought to have been decided in favour of the defendant. The rule of limitation, which has been held, and, I think, rightly held by the Judge of the first instance, to govern the case in Act IX of 1871, Schedule II, Article 59, which provides--that a suit for money payable to the plaintiff, for money paid for the defendant, must be instituted within three years from the time when the money was paid. If the money was paid for the defendant at all in this case, it was paid before the year 1870, when the brothers separated, and it is from that date, and not from the date of the bond subsequently given in 1874, that the period of limitation ought to count. Were it otherwise, it would be competent to a plaintiff in such a case to defer the operation of the Act of Limitation indefinitely by making a fresh arrangement with the lender of the money, to which arrangement the defendant is no party, and of which he has no notice. This view of the law accords with the decision of this Court in the case of *Ramkrishna Roy v. Muddun Gopal Roy* (12 W.R. 194).

8. With regard to the other point, although property in the hands of the managing members of a joint Hindu family may in most cases be presumed to be the property of the family and not of the individual manager, it does not follow that a debt contracted by the manager in his own name is presumably contracted on behalf of

the family. The condition of a Hindu family is prima facie joint, and consequently the property is prima facie joint in the hands of whoever among the members of the family happens to manage and possess it, but there is nothing to prevent the individual manager contracting a debt upon his own account.

9. The decision of the Court below is reversed, and the suit dismissed with all costs.