

(1869) 03 CAL CK 0038

Calcutta High Court

Case No: None

Mahant Jayram Gir

APPELLANT

Vs

Rani Shiuraj Koer and Others

RESPONDENT

Date of Decision: March 10, 1869

Judgement

1. In this case the plaint is brought against the Ranis, or the wives of the late Raja Chatpal Sing, and also against the minor son and heir of the said Raja, who is made a party to the suit. The plaint expressly states that the claim is founded or based upon the bond which is therein mentioned. We may, therefore, consider the case under two aspects:--first, as against the Ranis; and, secondly, as against the son or infant heir of the Raja. First, then, with respect to the claim as made against the Ranis. The plaint states expressly that the debt was a debt due from the Raja himself, consequently that it was not a debt due from the Ranis, but from the Raja himself. Therefore, the claim against the Ranis must be considered as in the nature of a claim against sureties. Now, the bond on the face of it is inconsistent with such a case. The bond, which is expressed to be made by the Ranis, begins by declaring that, the Raja having had monetary dealings with Gir, the banker, the proprietor of the firm which is there mentioned, "we," that is, the Ranis, "also entered into similar dealings with the firm of the said Mahant; that the whole of the principal debt and interest, consisting of certain unpaid items of previous dealings, and the loan we took on the occasions of the marriage and the "Muklawar" ceremony of the Bibi Sahiba having been balanced, the sum of Rs. 16,960-10-6 has been found due by us up to the present date; that we are at present unable to pay up the said sum, in consequence of our estates being under the management of the Government, along with those of the Raja, for the liquidation of the debts of the bankers." This bond, therefore, commences with stating that there had been transactions between the bankers and the Raja, and that the Ranis had similar dealings, drawing, therefore, a distinction between the dealings of the bankers with the Raja on the one hand, and dealings of the same bankers with the Ranis on the other hand. It also draws a distinction between the estates of the Ranis and the estate of the Raja,

Therefore," it appears to their Lordships that, upon the construction of this bond, it cannot be successfully contended that, where the words "we" or "us" are used, those words must be considered as including the Ranis and the Raja, because there is throughout the bond the distinction drawn between the dealings of the Raja and the dealings of Ranis, between the Ranis personally and the Raja, and between the estates of the Ranis and the estates of the Raja.

2. Then, treating it as a claim made against the Ranis in the nature of a claim against sureties, the evidence does not show, but, so far as it goes, tends to disprove that they were informed of the circumstances attending the debt, which is alleged in the plaint as being the Raja's debt, or that they were informed of the transactions before the Collectors, which raised a question as to the continued existence of the alleged debt. All that the evidence shows is, that this bond was taken into the zenana, and was brought out again executed, or stated to have been executed by them. Under these circumstances their Lordships are of opinion that this claim, in the nature of a claim against sureties, cannot be established against the Ranis.

3. It remains to consider the second question as to the liability of the infant heir, the son of the Raja. Now the plaint is expressly based upon the bond; but there is no evidence of the particular debt mentioned in the bond, which is a debt mentioned as being owing from the Ranis. There is an account produced, but that account does not tally with the sum mentioned in the bond as being due; and it is clear that there was another account, which is not produced or proved, and which might have disclosed the fact of the payment made by the Collector. The only debt which is proved to have existed is that which was the subject of the adjustment before the Collector. The Judge of the Zilla Court proceeded upon the footing of the fact of the adjustment before the Collector having been established in evidence; and the memorandum of regular appeal does not dispute that such an adjustment had been proved, but virtually admits that some adjustment had taken place. The evidence of Mir Mukarim Ali proves that the debt in question was for the balance, after deducting the composition; and if his evidence is to be excluded, or considered as untrustworthy, then there is no evidence to prove the debt alleged in the plaint.

4. In the opinion of their Lordships, it is established by the whole of the evidence, including the documentary evidence in this case, that such an adjustment did take place; and that, by virtue of that adjustment, the appellant obtained and received payment of a sum of money from the Collector, who, in the exercise of a public duty, was de facto in possession of the Raja's "property for the benefit of his creditors, and that that sum was so obtained and received by the appellant, upon the faith of the representation made by him to the Collector, that his debt was satisfied, or that he would accept the sum that was then paid in satisfaction of the debt owing to him. We are of opinion that the appellant cannot be heard in a Court of Justice to contradict that representation, or to sue upon a debt or contract having such an origin. Their Lordships, therefore, think that the decrees in question ought to be

affirmed, and we shall humbly advise Her Majesty to dismiss this appeal.