(1929) 07 BOM CK 0027

Bombay High Court

Case No: None

Ghelabhai Jinabhai		APPELLANT
	Vs	
Chhagan Narasi		RESPONDENT

Date of Decision: July 16, 1929

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 2 Rule 2

Citation: AIR 1930 Bom 60 : 122 Ind. Cas. 417

Hon'ble Judges: Norman Kemp, Acting C.J.; Murphy, J

Bench: Division Bench

Judgement

1. Defendants Nos. 2, 3, and 4 are the sons of defendant No. 1 and are members of a joint Hindu family. Defendant No. 1 opened a khata in. his own name for goods supplied from June 28, 1923, to May 30, 1924. Another khata was opened in the plaintiff''s books by defendant No. 2 which runs from June 3, 1924, to May 22,. 1925 A third khata was opened in the names of defendants Nos. 2 and 4. and the items in that khata run from May 29, 1925, to October 20, 1925. The plaintiff filed his suit on the first khata in the name of Chhagan, the father, claiming a certain sum of money as the balance due at the foot of that khata. That suit was No. 800 of 1927. In the course of the hearing it transpired on the production of a "sama-daekat" book that certain credits, which should have been credited to that khata, were credited to the khata in the name of defendant No. 2, whereupon the learned Judge decided that the plaintiff cannot sue in respect of the khata in the 1st defendant''s name, and that there was a running account which contained the items in all the three khatas mentioned. He, therefore, dismissed the suit.

2. The plaintiff then filed this suit on the account of all three khatas, and two issues were raised before the learned trial Judge as preliminary issues:

(1) Res judicata, and

(2) Under Order II, Rule 2, the plaintiff having failed to sue in respect of the whole of his claim in Suit No. 800 of 1927, he could not now sue for the balance. The learned Judge decided against the defendants on the question of res judicata, but he upheld their contention under Order II, Rule 2, that the present suit was barred against defendant No. 1 and his sons. Against that order the present application has been filed.

3. Now, it appears clear that the cause of action on which the plaintiff sued in Suit No. 800 of 1927 was the promise by defendant No. 1 to pay the balance due at the foot of the khata in his name. For that purpose a khata in his name was opened. It is, in fact, a promise made by defendant No. 1 alone or by defendant No. 1 as the "karta" of the joint family to pay the balance at the foot of that khata. The cause of action, therefore, was not a cause of action on the whole running account of three khatas, but a separate cause of action on a specific particular khata. It was not as if he were taking one item out of a continuing running account and attempting to sue on it, but he alleged that there was a specific promise to pay that particular item which took it out of the account. It is contended that, because he failed on that cause of action, therefore, he cannot now sue on the general account including all three khatas. This involves, I think, the fallacy that the first suit was on the cause of action of the whole running account. It was not. The result of acceding to such an argument might be disastrous. There are a great many cases of, for example, numerous indents between business men in this city. Bach of these indents forms a separate contract. If the indentor were to plead that all these indents formed the subject-matter of one account between, him and the importing office, then the effect would be that, if the plaintiff failed in suing on or proving a particular indent as a separate cause of action, he would, be unable to sue in respect of the other indents on the ground that his first suit should have been on the running account of all the indents. No plaintiff would ever take the risk of filing a suit with regard to a separate item giving rise to separate cause of action if this were the result.

4. Under the circumstances, I think that the present cause of action was an entirely different cause of action to the previous one and it cannot be said that the plaintiff, when he filed Suit No. 800 of 1927, filed that suit in respect of a portion only of his cause of action.

5. I am of opinion, therefore, that the order of the learned Subordinate Judge is wrong, and this is a case where we should interfere in revision. His order is set aside and the Rule made absolute with costs.