

(1911) 01 CAL CK 0051
In the Calcutta High Court

Baikunta Nath Chuckerbutty and Others	APPELLANT
Vs	
Hara Lal Pal Chowdhury and Others	RESPONDENT

Date of Decision : 04-01-1911

Acts Referred:

Citation : 9 Ind. Cas. 116

Hon'ble Judges : Mookerjee, J;Coxe, J

Bench : Division Bench

Judgement

1. This is an appeal on behalf of the first three defendants in a suit commenced against them by the plaintiffs-respondents for recovery of money due under a promissory-note executed on the 7th July 1904. The plaintiffs and the fourth defendant were partners of a firm, styled Ram Chandra Guru Churn Pal Chowdhry. The promissory note was executed in favour of the first plaintiff who was the managing member; but it is common ground that in this matter he acted on behalf of the firm and that the sum advanced was part of the assets of the partnership business. The debtors defendants admitted the transaction. Their defence to the claim in substance was that on the 10th March 1907, they paid Rs. 1,800 to the fourth defendant, and that the debt was satisfied to that extent. The Subordinate Judge held that the debtors in collusion with the fourth defendant had got up this unfounded plea, and that consequently there was, no valid defence to the claim. Upon appeal, the learned District Judge held that it was improbable that any payment had been made; but his judgment is meagre and unsatisfactory. The first three defendants have appealed to this Court, and on their behalf it has been argued that the decree in favour of the plaintiffs cannot be supported inasmuch as the fourth defendant upon his own admission has received Rs. 1,800 on account of the transaction in question. It has been contended in substance that the payment made to one of the partners was a good payment against all; and that, consequently, the plaintiffs are bound to allow credit for this sum. In answer to this contention, it has been argued on behalf of the plaintiffs-respondents that the alleged payment cannot be treated as a good payment against them because, admittedly, no money was paid by the

first three defendants to the fourth defendant, and all that happened was, that the fourth defendant set off the amount due from him to the debtors defendants against the amount due by the latter to the firm. After careful consideration of the arguments which have been addressed to us on both sides, we have arrived at the conclusion that this contention of the plaintiffs respondents must prevail.

2. It is clear from the correspondence between the parties, which has been placed before us, that the case for the debtors defendants is not that they made any actual payment to the fourth defendant in discharge of the debt but that the latter has withheld; payment of a sum of Rs. 1,800 due from him personally to them, in other words, the essence of the alleged transaction is, that the first-three defendants have allowed the fourth defendant to set off, against the debt due by them to the firm, the sum realisable from him. If we assume for a moment that the alleged set-off represents a genuine transaction, a matter upon which the parties are at controversy; the question arises, whether a release of a partnership debt by one partner is operative against the firm if it was taken in discharge of the separate debt of the partner releasing it, by his creditor knowing all the circumstances. In *Lindley on Partnership* (7th Edition page 161), it is slated that although each partner has power to receive payment of a partnership debt and to give a discharge for it on payment, it does not follow that he has power to compromise or settle the debt in any way he likes without payment. A partner has no implied authority to discharge a separate debt of his own by agreeing that it shall be set-off against a debt due to his firm; this proposition is supported by the decision in *Pieray v. Fynney* L.R. 12 Bq. 69 : 40 L.J. Ch. 404 : 19 W.R. 710. In the same work, it is stated in another passage (page 306) that according to the strict rulers of the Common Law, although a partner has no right to pay his own separate debt by setting it off against a debt-due from his creditor to the firm, yet if he actually agreed that such, set off should be made and it was made accordingly, he and his partners could not afterwards recover the debt due to the firm. In such a case, however, relief might have been had in equity and the cases of *Wallace v. Kelsall* 7 M. & W. 264 : 8 D.P.C. 841 : 10 L.J. Ex. 12 : 4 Jur. 1064 and *Gordon v. Ellis* 3 D. & L. 803 : 2 C.B. 821 : 15 L.J.C.P. 178 : 10 Jur. 359 could not be treated as good law since the Judicature Acts which have removed the technical difficulties that led to their decision *Midland Railway Company v. Taylor* 8 H.L. Cas. 757 : 31 L.J. Ch. 336 : 8 Jur. (N.S.) 419 : 6 L.T. 73 : 10 W.R. 382. In England, therefore, the rule seems to be perfectly well settled that a partner cannot discharge a separate debt of his own by setting it off against a debt due to his firm, to the prejudice of his co-partners. The learned Vakil for the defendants-appellants, however, has strenuously contended that this rule cannot be reconciled with the principle, unquestionably settled, that payment to one partner is payment to all, even after a dissolution *Butchart v. Dresser* 4 Deg. M & G. 542 : 10 Hare 453 and *Motilal v. Ghella Bhai* 17 B. 6 at p. 13. This contention does at first sight seem plausible, and is, as a matter of fact, supported by a dictum of Lord Ellenborough, C.J. in *Henderson v. Wild* (1811) 2 Campbell 561. In that case, the learned Chief Justice appears to have held that a

receipt by one of the partners discharging the firm debtor in consideration of the settlement of a private debt of the partner executing the receipt, is binding on the firm. The dictum in question, however, does not appear to have been followed, and even before the Judicature Acts, a contrary rule was laid down in *Farrar v. Hutchinson* (1839) 9 A. & E. 641 : 1 P. & D. 437 : 2 W.W. & H. 106 : 8 L.J.Q.B. 107. On the other hand, the rule in *Piercy v. Fynney* L.R. 12 Bq. 69 : 40 L.J. Ch. 404 : 19 W.R. 710 which was recently followed by the Madras High Court in *Veerasawamy v. Ibramsa Rowther* 19 M.L.J. 221 : 5 M.L.T. 209 : I Ind. Cas. 200, has been defended on broad grounds of justice, equity and good conscience. Thus, Story in his work on Partnership (section 132) points out that one partner has no authority to misapply the funds or securities or other effects of the partnership in discharge or payment of his own private debts, claims or contracts. In such cases, the creditor of the partner who is also a debtor of the firm, is deemed to act mala fide and in fraud of the partnership, so that the transaction must be treated as a nullity. Similarly, Theophilus Parsons in his Treatise on Partnership (sections 90 and 136), explains, that the rule, that payment to one partner is a payment to all, is based on the principle that a partner has implied authority to receive the payment of debts and to settle and compromise the claims of the firm. The rule, therefore, ceases to be applicable where the transaction is one, in respect of which the partner cannot be rightly deemed to possess implied authority to bind the firm. Now a partner has no implied authority to discharge his private debts by set-off against a debt due to the partnership; consequently, such a set-off by one partner cannot prejudice his co-partners. To put the matter in another way, whenever a party receives from any partner in payment for a debt due from that partner only, the indebtedness or obligation of the firm in any form, the presumption of the law is that the partner gives this and the creditor receives it in fraud of the partnership; in other words, if a partner releases a debt due to his firm in consideration of a release to him of a debt due by him solely, the presumption will be that the transaction was fraudulent. The matter has been repeatedly considered in the American Courts and the rule as stated in England, has been followed by the Supreme Court of the United States in *Rogers v. Batchelor* (1838) 12 Peters 221; see also *Thomas v. Stetson* 1833) 49 Am. Rep. 148 : 62 Iowa. 537; *Eady v. Newton* (1905) 1 L.R.A. (N.S.) 605; and in numerous other cases which will be found collected in *Hare and Wallace's Leading Cases*, 5th Edition, Volume I, page 558]. The true principle is that as a partnership is formed for the common benefit of all the partners, every transaction ought legally to be a joint account and not for the exclusive, benefit of one member of the company so that one partner cannot bind the firm to pay his own private debts. We must, therefore, adopt the view that an agreement by one partner to discharge a debt due to the firm by setting off his individual liability against it, is not binding on the firm, unless made with the consent of the other partners or subsequently ratified by them. It has been suggested, however, in the case before us that there has been such ratification and our attention has been drawn to the allegation in the written statement of the fourth defendant, that in a suit for adjustment of accounts instituted by him

against his partners, the latter have made him liable for this sum of money. It may be mentioned here that according to the case of both the parties, the partnership was dissolved in 1903, that is, previous to the date, of the alleged set-off when the debtors were aware of the dissolution. It has been contended, however, on their behalf that if the plaintiffs have actually made the fourth defendant liable for the sum primarily payable by them, they have adopted the set-off and ratified the arrangement. This point appears to have, been raised in the Courts below but neither the Subordinate Judge nor the District judge has investigated it. We, therefore, sent for the record of the suit for winding up the partnership business commenced by the fourth defendant against the plaintiffs. That record unfortunately does not, by itself, throw any light upon the matter now in controversy. The partnership suit was settled, and by consent of parties a decree was made on a petition of compromise which defined the liabilities of the several partners; but the details of the calculations, by which the amounts of the several sums were fixed, are not available. Upon the materials on the record, therefore, it does not appear possible to determine whether in the settlement of the partnership accounts, the plaintiffs have made the fourth defendant responsible for the sum admitted by him to have been set-off against the partnership debt of the first three defendants, and a further investigation is rendered necessary in view of the large sum of money claimed in the present litigation.

3. The result is that this appeal is allowed, the decree of the District Judge set aside, and the case remitted to him for re-consideration. He will determine upon evidence to be adduced by the parties whether, as a matter of fact, the plaintiffs have already made the fourth defendant liable for any portion of the debt which they now seek to recover from the original debtors, the first three defendants. If the fourth defendant has been already made liable for any portion of the Rs. 1,800 admitted by him to have been set-off against the partnership debt due from the first three defendants, the latter will be entitled to credit to that extent. The additional evidence, required for the determination of this question, may be taken either by the learned District Judge himself or under his direction by the Court of first instance. The records of the accounts suit called for by us will be forwarded to the learned District Judge for such use as may be necessary. The costs of this appeal will abide the result.