
(1939) 08 CAL CK 0011
In the Calcutta High Court

Benoy Krishna Ghose Chaudhuri	APPELLANT
Vs	
Atul Krishna Ghose Chaudhuri and Others	RESPONDENT

Date of Decision : 28-08-1939

Acts Referred:

Limitation Act, 1963 — Section 10

Citation : AIR 1940 Cal 51

Judgement

1. This appeal is by the defendant in a suit for partition and accounts. The suit was instituted on 8th March 1935 by four plaintiffs, three being brothers of defendant and the fourth his brother's widow. The properties in respect of which the claim was made consists of five items a dwelling house described in schedule Ka, and items 4 of property described in sch. Kha. The finding of the learned Subordinate Judge is that items 2 to 4 of sch. Kha had been sold long before the suit with the concurrence of the parties to the suit or their predecessors-in-interest, and in item 1 of sch. Kha there are other cosharers not parties to the suit. He has accordingly excluded from partition the items four of sch. Kha and has only directed partition of the house described in sch. Ka on a declaration that the plaintiffs have four-fifths share (each of them a fifth share) and the defendant the remaining fifth share. He has also declared that the parties have shares in the same proportion in item 1 of sch. Kha. Defendant 1 denied the right of plaintiff 4 (his brother's widow) to the properties in suit. That contention was overruled by the learned Subordinate Judge and it has not been repeated before us. The defendant-appellant does not challenge the above findings of the learned Subordinate Judge. The learned Subordinate Judge has however made the defendant liable to render accounts from 29th January 1901 till the date of the suit. This part of the decree only is challenged by the appellant.

2. In the plaint it is recited that the properties in suit with other properties belonged to Eadha1 Krishna Sen. Radha Krishna died in 1887 without male issue. He left three daughters Nistarini, Aghoremani and Sarada Sundari. He left a will by which he appointed his two sons-in-law executors. They were Prasanna Kumar and Bhuban Mohan, the husbands of Aghoremani and Sarada Sundari

respectively. After probate Sarada Sundari's husband died and Prasanna Kumar continued to act as the sole surviving executor. In the beginning of 1901 he made the distribution. He made over the estate in equal shares to Aghoremani and her sons and to Sarada Sundari and her sons, and directed these two branches to pay, by way of maintenance, Rs. 40 per month to Nistarini, who was a childless widow then living at Benares. All the persons interested in the estate of Radha Krishna accepted this arrangement and distribution. Shortly after this distribution Sarada Sundari and her four sons, plaintiffs 1 to 3, and the husband of plaintiff 4 executed on 29th January 1901 a power of attorney in favour of defendant the second, son of Sarada Sundari, authorizing him to manage the joint estate, make collections and conduct suits and proceedings. It is however admitted by the plaintiffs that the defendant was also the karta of the joint family and has acted as such all along.

3. In the plaint the defendant is sought to be made liable for accounts "as agent and karta." The learned Subordinate Judge iii passing the decree for accounts has not stated whether the accounts are to be rendered by him on the footing that he was the karta or on the footing of a mere agent. Before us the parties admit that the accounts must be taken on the footing that he was the karta. We accordingly direct that the accounts which are to be taken from the defendant are to be taken on the principles formulated in *Narendra Nath Roy and Others Vs. Abani Kumar Roy and Others*, .

4. With regard to the period of accounting the learned advocate for the appellant raises two points. He says that (i) accounts are to be directed only up to a period of six years before suit, and (ii) if that contention be not accepted, accounts cannot be directed for a period anterior to 1333 B.S. (1926-27) or in any event for a period anterior to 1330 B.S. (1923-24) as the defendant had in fact rendered accounts up to that period. We will deal with the second question first, as it depends entirely on facts. There is documentary evidence on the record that the defendant used to make furd's showing the income and expenditure and used to give those furd's to his co-sharers. Two such furd's, one containing the accounts of the year 1330 and the other of the year 1333, are on the record with the covering letters (II, 35 and II, 41). The account of 1333 was sent to plaintiff 1 who usually resided at Cawnpur with the covering letter Ex. 1(c) dated 25th May 1927 (11-40). The reply of plaintiff 1 to that letter has not been produced by the defendant. There are however two other letters of the defendant to plaintiff 1, dated 5th August 1927 and 20th November 19-27-(Ex. 13(c), II-44 and Ex. 3, II-4) which throw light upon the question. In the first of the two, which was written after the furd of 1333 had been sent to plaintiff 1 the defendant recites the terms of a letter which he had received from plaintiff 1. There he mentions that plaintiff 1 had made a demand for five years account. In second letter, Ex. 3, he pleads for time for preparing the accounts. These two letters lead us to conclude that no objection had been taken by anybody to the accounts submitted by the defendant for a period up to 1330 but that accounts for later years including that of 1333 submitted by the defendant to plaintiff 1

with the letter Ex. 1(c) had not been accepted as final. We accordingly hold that the defendant is bound to render accounts of his management from the year 1331 B.S. only and not for an earlier period, unless he can make out his first ground.

5. In considering the first joint raised we must proceed on the footing that the defendant was the karta of a joint Hindu family governed by the Dayabhaga law, and as such karta is accountable for the management of the joint estate. The learned advocate for the appellant urges, and we think rightly, that Section 10, Limitation Act, is not applicable. He further urges that his client is only liable to render account for a period of six years anterior to the suit, as the claim for accounts for the period before that is barred by Article 120, Limitation Act. In support of his argument he relies upon the decision of a Division Bench of this Court which has applied Article 120 to a case of accounts from the karta of such a family : Biswambar Halder Vs. Giribala Dasi and Another, . In that case the karta was held liable to account, in a suit for partition and accounts, for only a period of six years anterior to the suit. We will have to consider this case in some detail.

6. A claim for account in a suit for partition of joint family property is in a sense incidental to the right to require a partition. Its object in part is to ascertain the moveable assets to be divided between the parties to the suit along with the immovable family properties. In a sense its scope is wider to find out misappropriations or misapplications of joint, family funds. A claim for account when joined in a suit to a claim for partition stands on a different footing from a claim for accounts against the karta, when the family is still joint, and a right to enforce it by suit, when no partition is claimed therein, must, in our judgment, rest upon entirely different considerations. At a time a view was expressed that the junior members of a Dayabhag family having shares in the family properties had no right to demand accounts of the karta or enforce, it by suit without at the same time suing for partition. The observations of the Supreme Court made in 1855 in *Srimutty Soorjomony Dassee v. Denobandhu Mullick* 6 M.I.A. 526 541 are specific and indicate a view in support of that proposition. The force of the observations made in that case that "the liability to account can only be enforced upon a partition" have, in our judgment, been affected by the decision of the Full Bench of this Court pronounced in *Abhoy Chandra Roy v. Pyari Mohan* (1870) 5 Ben L.R. 347. In that case the defendant as karta had managed the undivided share of plaintiff for some time. Later on, the management of that share was taken out of his hand and committed to another person. The plaintiff sued the defendant for account for the period he had managed his share. Partition was not claimed in the suit. In the referring order Mitter J. observed that under the Hindu law, which had been correctly summarized in *Juggernath's Digest*, Vol. 3, p. 97, a karta is liable to give an account of his managership to the other members of the joint family, and can be sued if demand of the latter for accounts is refused. The Full Bench held the suit to be a good one. That authority is binding on us and we hold that in a Dayabhaga family a junior

cosharer has the right to demand accounts of the karta while the properties are still joint and on refusal can enforce it by a suit without praying therein for partition of the joint estate. This is the first point which we decide.

7. The next question is what is the period of limitation to such a suit a suit for accounts without partition. In our judgment the residuary Article, Article 120, must apply. Limitation would run in accordance with col. 3 from the time when the "right to sue accrues." "Whether a person has a right of a particular nature against another depends upon the jural relation. The jural relation between a junior member and the family head gives the former the right to have accounts from the latter. That is what we have already held. The right to sue for accounts would arise only when the said right had been infringed or when infringement is threatened. In AIR 1930 270 (Privy Council) the right Hon^{ble} Sir Benod Mitter commenting upon col. 3 of Article 120 said as follows:

There can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.

8. In that case the right in question, namely right to moveable property accrued to the plaintiff in 1918 and the suit was instituted in 1927. It was held to be within time on the basis that Article 120 was applicable, as the invasion of the plaintiff's right was in 1922. A right must of necessity accrue before its infringement. What facts constitute the infringement would depend upon the nature and extent of the right. The right of a junior member to demand accounts from the karta of a joint Hindu family accrues or comes into being as soon as the former acquires a right to the family property but it would not necessarily follow that his right to sue the latter would accrue from that moment of time. Some other facts must intervene. What those facts are to be would, as we have already observed above, depend upon the nature and extent of the right of the cosharer. This makes it necessary for us to examine the constitution of a joint Hindu family governed by the Dayabhaga law and the powers, obligations and responsibilities of the karta of such a family.

9. A normal Hindu joint family in Bengal consists of members with varying degrees of rights. Some have defined snares in the family properties, some the legal right to be maintained and rest are dependent members, wives and children of the cosharers and persons connected by blood or marriage who, though not strictly members of the family actually live in the family. The karta has to take care of all of them and to supply their maintenance and legitimate needs. He is not merely the manager of the joint properties and his position is not akin to an agent or even trustee in the sense in which these terms are used. His powers are greater and in one sense he has greater responsibilities. He must be solicitous to preserve not only the family properties, but also the family name and prestige, and must be careful in preserving and promoting the family welfare. He holds the strings of peace and harmony and enjoys the respect and confidence of the members of the family. The amount of confidence which is invariably reposed in

him by the other members of the family, so long as there is peace and harmony in it, is well known to those who have practical knowledge of such families. In the normal state of a joint Hindu family implicit reliance is placed on him, on his impartiality, ability and wisdom by the other members. It is only when dissensions arise in the family or when the karta by his unfair or biased acts shakes the confidence of the members of the family that occasion arises for demanding account of his stewardship.

10. The powers of a karta of a joint family are very wide. He is not merely the collecting agent and custodian of the family property and funds. He is no doubt under a liability to account, but the measure of that liability is different from that of an agent, trustee, executor, administrator, partner or mere co-owner. He is liable to account for what he gets in and not for what he ought to have got in with greater skill and diligence. He has a wide discretion in spending family funds and that discretion is limited only by considerations of family necessity. He can spend more on one branch than on another, although the shares of both the branches in the family properties be equal. In short, the position of a karta cannot be defined in terms of any jural relationship known to the western jurists.

11. A karta has the liability to render account. But what is the nature and extent of that liability? He is under no obligation to render account to the cosharers at the end of each succeeding year, or even for any period, unasked. His liability amounts to this, and no more, namely that when asked to furnish account he must comply. Such being his obligation the corresponding right on the part of his cosharers is the right to make a demand for accounts from him. The right is not to have accounts without a previous demand. Such, being the right, the right is infringed only when the demand for account is refused. The right to sue him for accounts accordingly arises or accrues only when there is a refusal to the demand. Having regard to the nature of a joint Hindu family placed under a kartaship it would be intolerable, and would be against the institution of a joint Hindu family, if it be held that a suit for account, while the family is still joint, is maintainable against the karta at the instance of a junior member, who had made no previous demand for accounts and whose demand had not been refused by the karta. In that case a whimsical cosharer would be placed in a position, without suing for partition, to bring successive suits for accounts against the karta, year after year without giving him an opportunity to render the accounts amicably. In our view the right to sue the karta for accounts apart from accounts that may be claimed in a suit for partition, arises only when a demand for accounts has been refused.

12. We cannot accordingly subscribe to the view that the right to get accounts is automatically extinguished year after year as years roll on, while the family continues to be joint and the members thereof have no occasion to lead them to suspect that the karta is not doing what he is expected to do. In our judgment there is no principle behind the dictum that a karta is bound to render account only for a period of six years before the suit, whatever the circumstances be. In

the view we have taken of the position of a karta and of the nature of the right of the junior members in this respect we do not feel bound to follow in the case of a karta the observations made to the effect that a trustee or executor is bound to render accounts for a period of six years only {interior to the suit for accounts. The cases, *Sarada Prosad Chatterjee v. Broja Nath* (1880) 5 Cal. 910, *Hemangini v. Nobin Chandra* (1883) Cal. 788 . and *Advocate-General of Bombay v. Bai Punjabai* (1894) 18 Bom. 551. were suits for accounts against trustees. The case in *Barada Prosad v. Gajendra Nath* 13 C.W.N. 557 was a case against an executor. In those cases demand for accounts was not the essence of the right or of the cause of action. In *Orde v. Skinner* (1881) 3 All. 91 the suit was a suit for account by a cosharer against another cosharer who by the will of the common ancestor had been made the manager. There was no joint family and the parties were not Hindus but Christians. The Judicial Committee of the Privy Council simply recited as a fact at p. 300 of the report that the Subordinate Judge had decreed accounts only for a period of six years before the suit. The question for decision before the Privy Council did not relate to the period of accountability but as to whether the Court in which the suit had been instituted had jurisdiction to entertain it. From the recital of facts it moreover appears that the suit was based on the term in the will that the managing co-owner would have to render accounts yearly at the end of each year. Failure by itself to render a year's account at the end of that year constituted the breach or infringement and gave the other side right to sue at once for that year. The claim to each year in succession accordingly became barred at the end of six years from the expiry of that particular year.

13. In *Abedunnissa Bibi and Others Vs. Isuf Ali Khan*, some of the heirs of a Mahomedan sued the remaining heir for an account of the money which the latter had collected on the basis of a succession certificate issued to him alone. This Court held that Article 62 was applicable and the suit was barred by time as it had not been filed within three years of the receipt of the money by the defendant. In answer to the plaintiff's contention that Article 120 was applicable and the suit was in time as it was instituted within six years of the plaintiff's demand and the defendant's refusal *Ghosh and Panton JJ.* stated by way of obiter that

if in a suit for accounts which falls within Article 120 time is to run from the date when the defendant refuses to comply with the plaintiff's demand for accounts, there would be practically no limitation in a suit for accounts, for the plaintiff in such a case may choose to wait as long as he likes and all that he would have to do to save limitation even under Article 120 is to send the letter of Remand to the defendant and to institute a suit within six years of the refusal.

14. Speaking generally the principle so laid down is appealing, but where the essence of the right is the demand, or to put it in another way, where the right consists of the demand for accounts, the right to sue would only begin when the demand is refused. The obiter made in that case accordingly cannot apply to the

case before us. We are also of opinion that the case in AIR 1925 93 (Privy Council) is not applicable to the case before us. Naresh Narayan was a cosharer of the Midnapore Zemindary Co., Ltd. He had been ousted from the joint property by Messrs. Robert Watson & Co., the predecessors-in-interest of the Midnapore Zemindary Co., Ltd. He sued for joint possession and got a decree. In execution of that decree he was put in symbolical possession in 1903. In 1912 he sued for partition and for mesne profits. The High Court of Calcutta decreed partition overruling the plea of adverse possession and other pleas. That part of the judgment was upheld by the Judicial Committee, *Midnapore Zemindary Co. Ltd. v. Naresh Narayan Roy* A.I.R.(1924) P.C. 144. The High Court also granted mesne profits for a period beginning from three years before suit. The Judicial Committee pointed out that the correct thing to do was to give the plaintiff compensation for use and occupation, on the principle that the defendant, his cosharer, was in exclusive possession of joint property. The Judicial Committee accordingly without further consideration gave the plaintiff compensation for nine years before, suit *e.i.* from 1903 to 1912. On review this period was reduced to six years. The Board applied the six years' limitation provided for in Article 120. The right of the plaintiff was to get compensation for use and occupation from his cosharer, the defendant, for every year he was kept out of possession. Non-payment therefore by the defendant constituted the infringement. No demand was required and a refusal accordingly was immaterial. Each year's unsatisfied claim was accordingly barred at the end of the following six years. We do not see how this case helps the appellant before us.

15. We will now consider the case in *Biswambhar Haldar v. Giribala Dasi* AIR (1921) Cal. 571. The reporter has not reported the facts, and they do not fully appear from the judgment. That was a case of partition of joint family properties and for accounts from the karta. The family was a joint Hindu Dayabhaga family. If the demand for accounts for a period six years anterior to the suit had been made and refused by the karta, the decision is correct. It may be that those were the facts. If however there was no such demand and refusal beyond six years we respectfully dissent from the same, as apparently col. 3 of Article 120 was not properly considered. In the case before us the right of the plaintiffs to claim accounts was there. The plaintiff had made demands, but there is no evidence that such demands had been refused before 8th March 1929. The last letter on the record bearing upon the question of accounts is Ex. 3 (II-46) dated 20th November 1927. In that letter the defendant did not refuse compliance with the demand for accounts but expressly promised to submit them later on. The earlier letter written by the defendant dated 5th August 1927 (Ex. 13(c)II-44) is of the same effect. There is no evidence on the record that the defendant later on took up a different attitude. We accordingly hold that the claim of the plaintiffs for accounts for any period after 1331 is not barred by time. We accordingly allow this appeal in part and direct the defendant to render account of his management from 1331 B.S. till the date of the institution of the suit on the footing that he was the karta. As the success is divided we direct each party to

bear its respective costs of this appeal.