(1939) 11 PAT CK 0015

In the Patna High Court

Firm Harchandrai Anandram APPELLANT

Vs

Firm Kedarnath Nirmal Chandra Guha RESPONDENT

Date of Decision : 30-11-1939

Acts Referred:

Citation : AIR 1940 Patna 353

Hon'ble Judges : Harries, C.J;Manohar Lall, J

Bench : Full Bench

Judgement

Harries, C. J.

1. This is a plaintiff''s appeal from a decree of the learned Subordinate Judge of Bhagalpur passed in Money Suit No. 191 of 1934. The suit was decreed by the learned Subordinate Judge against all the defendants. As regards defendants 3 and 7, the decree was not only against their share in the family property but also a personal decree. The decree against the other defendants was a decree to the extent of their interest in the family property. In this appeal the plaintiff contends that he should have been granted a personal decree not only against defendants 3 and 7 but also against defendants 2, 4 and 6.

2. The facts of the case can be shortly stated as follows : In the year 1920, three ''brothers Ashu, Kedarnath and Gangadas commenced to carry on business, and in that business Oharu and Nirmal, the sons of Kedarnath, played an important part. This family was governed by the Dayabhag School of Hindu law. In the year 1921, this business began to borrow money from the plaintiff. On 18th April 1931, Kedar, the father of defendants Charu, Nirmal and Bimal, died, and the business continued to be carried on under the old name of Kedarnath Nirmal Chandra Guha. On 3rd July 1931, Nirmal, as managing partner, settled the accounts of the firm up to 30th May 1931, and agreed to pay interest at the rate of 12 per cent, per annum on the balance due. The account ran on and in due course the plaintiff filed this suit claiming a balance of Rs. 5116-11-0 against the eight defendants. Charu, defendant 2, Nirmal, defendant 3 and Bimal, defendant 4, are the sons of Kedar deceased. Khitish, defendant 5, Jyotish, defendant 6 and

Susil, defendant 7 are the sons of Gangadas, deceased, and Sudhir, defendant 8 is the son of Suresh deceased, who was the son of Gangadas deceased.

3. According to the plaintiff, the business, Kedarnath Nirmal Chandra, was a business, of this family which was actively conducted by Nirmal and Susil at Bhagalpur. The plaintiff also contended that Charu, Bimal and Jyotish were also actively interested in the firm, and they claimed that these defendants were not only liable to the extent of the family property but were also personally liable. The main defence was that this business was not a family business at all but was the business of Nirmal, who had been described as an idler and partially educated man. It is said that the business was created by Kedar to find employment for this somewhat useless son.

4. The suit out of which this appeal arises, was tried with a large number of other suits, and the evidence led was treated as evidence in all the cases. The learned Subordinate Judge held that the firm Kedarnath Nirmal Chandra was the joint family firm of the defendants and not the personal business of Nirmal. His findings upon this question however are somewhat contradictory. At p. 80, Parts I and II of the paper-book, he sums up the position in these words:

For these reasons I hold that the firm Kedarnath Nirmal Chandra Guha was the joint family firm of the defendants and was opened by the three brothers Gangadas, Kedar and Ashu, and after the deaths of the former two of their song became partners of the firm in place of their fathers, and as such, all the defendants are liable for plaintiff''s dues.

5. In this finding the learned Judge seems to suggest that the only persons interested in the business at the commencement were the three brothers, Gangadas, Kedar and Ashu, and that the sons of Kedar and Ganga das only became interested in the business on the death of their fathers. It is however clear from an earlier finding that Charu at least was actively interested in the business from its very commencement. At p. 79 the learned Subordinate Judge deals with the evidence concerning Charu''s participation in the affairs of this firm. Counsel for the respondents does not challenge the accuracy of the statement of the learned Subordinate Judge. It appears that as early as 7th April 1921, Charu was borrowing money from the Benares Bank to assist the firm. Charu and his father Kedar also raised money to discharge the debts of the firm in 1925. In 1930 Charu transferred Rs. 1900 from his private account to the firm''s account. Again on 28th June 1932, Charu borrowed Rupees 5000 from the Bank and this amount was credited to the account of the firm. Summing up these transactions, the learned Subordinate Judge says.

6. These papers go to show that Charu had an important band in the business of the defendant firm." In fact, these various transactions show that Charu took a very active part in the activities of the firm from its commencement, and there can be no doubt, in my view, that Charu was in the position of a partner in this business from its commencement. He was advancing money to the firm and

providing for the payment of its debts. In fact, he appears to have been one of the most important members of the firm. There is also abundant evidence to show that later when this firm got into difficulties, Charu was taking an active interest in its affairs. The Benares Bank was a creditor of this firm for a very substantial amount, and at pp. 15, 16 and 17 (Part III of the paper-book) are printed letters passing between the Benares Bank and the defendant Charu. These letters make it clear that at a time, namely 1931, Charu was taking an active interest in the financial affairs of the firm and was endeavouring to make arrangements for payment to the Bank. At p. 30 (Part III of the paper-book) there is printed a most important letter from Charu to Rai Bahadur Bansidhar Dhandhania, the proprietor of the plaintiff firm.

7. This letter undoubtedly refers to the debt which is the subject-matter of this suit. In this letter he makes it clear that he was actively interested in the affairs of the firm, and he refers to the debtors of the firm as "our debtors" and to the creditors of the firm as "our creditors." In this letter Charu clearly admitted his interest in the firm.

There can be no doubt that Charu was interested in this firm; but it has been contended by Mr. Sushil Madhab Mullick on behalf of the respondents that he can only be made liable to the extent of his share of the family property. According to Mr. Mullick, the only persons who could be made liable personally were the two persons Nirmal and Sushil, who have been held to be the only two members of the family living at Bhagalpur and who were attending to the daily affairs of the business. Sir Manmatha Nath Mukharji on behalf of the appellant has however argued that Charu can be made personally liable for this debt, because he was throughout an active member of the firm. He has relied upon a number of cases; but it is unnecessary to refer to them in detail. Sir Manmatha Nath Mukharji agrees that the law is correctly stated at p. 259, Mulla''s Principles of Hindu Law, Edn. 8. There the learned Author says:

In the case of an ordinary partnership, it is not only the share of each partner in the partnership-property which is liable for the payment of that partnership debts, but the separate property of each partner is also liable. In the case of debts contracted by a manager, in pursuance of his implied authority in the ordinary course of the family business, there is a distinction between the liability of a manager and the liability of his coparceners. The manager is liable not only to the extent of his share in the joint family property, but being a party to the contract, he is liable personally, that is to say, his separate property is also liable. But as regards the other coparceners, they are liable only to the extent of their interest in the family property, unless, in the case of adult coparceners, the contract sued upon, though purporting to have been entered into by the manager alone, is in reality one to which they are actual contracting parties, or one to which they can be treated as being contracting parties by reason of their conduct, or one which they have subsequently ratified....

8. According to the appellant, the managing partner contracts not only on behalf

of himself but on behalf of all the members of the firm who are taking an active part in the conduct of its affairs. The first loan in this case was taken by Kedar and Nirmal, and later payments made from time to time by Nirmal. Nirmal settled the accounts; but can it be said that Nirmal throughout was merely acting for himself or was he acting as agent for the other members of the firm who were actively interested in it? As I have stated, Charu was certainly very active in this firm from its very commencement, and in my view, it can well be said that he must be treated as one of the contracting parties to this loan.

9. Mr. Sushil Madhav Mullick, however, argued that Charu can never be liable in respect of this transaction, no matter how. active an interest he took in the affairs of the firm after the death of his father. It is contended that during his lifetime Charu had no interest in the property as the family was governed by the Dayabhag School, of Hindu law.

10. Accordingly, it is urged that on his father''s death Charu could not be personally liable for any debt contracted by the family firm before he acquired an interest in it. That argument in general may well be sound; but the position is different in the present case. As I have already pointed out, Charu took a very active interest in the affairs of this firm from the very outset, and he was advancing money and helping to finance the firm certainly as early as 1941. It appears to me upon the Judge''s findings that the only inference that can be drawn from the facts is that Charu was a partner in this business with his father Kedar and his brother Nirmal and his uncles Gangadas and Ashu.

11. If he was a partner and an actual partner in the business when this loan was taken, then clearly he was personally liable in respect of it. That personal liability would not cease on the death of his father Kedar and on his acquiring an interest in the family property. In my view, upon the facts of this case, Charu was personally liable for this loan throughout. He had taken an active part in the business from its commencement, and though he was not resident in Bhagalpur, he still continued to take an active part after the death of Kedar. As I have stated, when creditors were finding difficulty in obtaining payment letters were written by them to Charu, and in reply to those letters he clearly admits his active interest in the firm.

12. If the facts are regarded from this point of view, the difficult questions of Hindu law do not arise. This is not a case where Charu first became interested in the firm on his father''s death. He was interested along with his father, and on the death of his father, he also acquired an interest in the family property. His personal liability remained, in my view, throughout, and that being so, the decree passed against Charu should have been not only a decree to the extent of his interest in the family property but should also have been a decree against him personally.

13. Sir Manmatha Mukherji also contended that a personal decree should also have been passed against Bimal, defendant i, and Jyotish, defendant 6. He,

however, admits that there is no evidence that these two persons ever took an active part in the affairs of this firm. Bimal was the son of Kedar, and there is nothing to show that he took an active interest either during Kedar''s lifetime or after his death. Similarly, Jyotish who is the son of Gangadas, does not appear to have interested himself actively in the affairs of this firm either during his father''s lifetime or after his death. The only possible evidence against these two persons are powers of attorney executed by them in favour of Nirmal giving the latter a right to execute a mortgage on their behalf.

14. In my view, these two documents cannot possibly establish that either Bimal or Jyotish was ever actively interested in this firm, and in my judgment, the limited form of the decree passed against them must be sustained. For the reasons which I have given, I am satisfied that a personal decree should also have been passed against Charu, but in other respects the decree of the Court below cannot be successfully assailed. I would, therefore, allow this appeal in part and direct that a personal decree also should be passed against Charu. As this appeal has partially succeeded and partially failed, I would make no order as to costs in this Court. The order for costs in the Court below will remain) unaffected.

Manohar Lall, J.

15. I agree.

