(1957) 01 CAL CK 0018

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 75 of 1951

Gouri Sankar Mukherjee APPELLANT

Vs

Sankar Prosanna Mukherjee RESPONDENT

Date of Decision : 11-01-1957

Acts Referred:

Bengal Tenancy Act, 1885 — Section 95, 98

Civil Procedure Code, 1908 (CPC) — Order 40 Rule 1, Order 40 Rule 2, Order 40 Rule 3, Order 40 Rule 4

Citation : 61 CWN 489 : (1958) 1 ILR (Cal) 263

Hon'ble Judges : Panchkari Sarkar, J;P.N. Mookerjee, J

Bench : Division Bench

Advocate : Chandra Narayan Laik, for the Appellant;Uma Prosad Mookerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookherjee J.

1. This appeal is by Plaintiffs Nos. 2 and 3 and it arises out of a suit for accounts brought by them along with Plaintiff No. 1 since deceased of whom Plaintiffs Nos. 2 and 3 are the legal representatives, the Plaintiffs Nos. 4, 5 and 6 against the Defendant-Respondent No. 1.

2. It appears that Plaintiff No. 4 Tarasankar Mukherjee was appointed common manager of the joint estate of the six Plaintiffs and pro forma Defendants Nos. 2 to 4 which included mahal lot Sonj in 16 annas. The appointment was made by the learned District Judge, Birbhum, u/s 95 of the Bengal Tenancy Act. The common manager was eventually discharged by the learned District Judge on 7th Bhadra, 1353 B.S., corresponding in August 24, 1946. The Plaintiffs allege that, during Plaintiff No. 4''s term of common managership, he appointed Defendant No. 1. Sankar Prosad Mukherjee as gomosta of the said mahal Sonj and this appointment terminated as a matter of law with the discharge of the common manager as aforesaid. They further allege inter alia that the said Defendant has

not rendered accounts of his work as gomosta as aforesaid either to the common manager or to the Plaintiffs or anybody else. On the above allegations, they bring the present suit for accounts. The other prayers in the plaint are not material for our present purpose as the only point which has been argued before us in this appeal relates to the question of maintainability of the suit as a suit for accounts.

3. The defence is a denial of the Plaintiff''s'' material allegations. The Defendant contends that he was never appointed a gomosta by the Plaintiff No. 4 and never worked as such under him or under the Plaintiffs'' estate, whether in respect of the disputed mahal Sonj or any other mahal; that he never kept any money of the estate or the mahal in his custody and never had any liability to render accounts either to the Plaintiff No. 4 as common manager or to the Plaintiffs or their estate. He further contends that even on the Plaintiffs'' allegations, the suit was not maintainable in law as there was no fiduciary relationship between him and the Plaintiffs or any of the Plaintiffs, the Plaintiff No. 4 having sued merely as a co-proprietor along with the other Plaintiffs.

4. The suit was decreed by the trial court upon the finding that the Defendant worked as a gomosta under the common manager Plaintiff No. 4 in the disputed mahal Sonj for the two years 1351 and 1352 B.S., and was liable to render accounts to the Plaintiffs. He, accordingly, passed a preliminary decree for accounts on that footing and gave directions for appointment of a commissioner to take such accounts. On appeal, the suit was dismissed by the learned Subordinate Judge as not maintainable in law. He, however, apparently agreed with the learned Munsif so far as the latter''s finding that the Defendant acted as gomosta in the disputed mahal was concerned. Aggrieved by this dismissal of their suit by the appellate court the Plaintiffs have preferred this Second Appeal. The Defendant has filed a cross-objection against the concurrent finding of the two courts below that he had acted as a gomosta of the suit mahal.

5. In our opinion this appeal ought to fail.

6. The only argument in support of the appeal was to the effect that the suit for accounts by the Plaintiffs as co-proprietors against the Defendant was maintainable in law. We are unable to uphold that contention and to give effect to it.

7. It is well-settled that a common manager, appointed by the District Judge u/s 95 of the Bengal Tenancy Act, as was Plaintiff No. 4 in the present case, is an officer of the court and his position is analogous to that of a receiver. It has also been held (vide Harihar Mookerjee and Anr. v. Jaharuddin Mondal (1920) 26 C.W.N. 992 and we find no sufficient reason to differ from that decision-that a suit by the proprietors for accounts against an officer appointed by the receiver during his term of Office is not maintainable in law. On similar principles such a suit by the co-proprietors against an officer, appointed by the common manager as aforesaid, would also be barred in law.

8. The above view is amply supported by principle and authority (vide Nabo

Kishore Mandal v. Atul Chandra Chatterjee and Ors. (1912) 17 C.W.N. 846; Beni Madhab Sukul and Anr. v. Deb Narayan Sukul and Ors. (1919) 24 C.W.N. 138; Harihar Mookerjee and Anr. v. Jaharuddin Mandal. (Supra); and Brindaban Chandra Mitra v. Atul Krishna Basu (1935) 40 C.W.N. 92. Both the common manager and the receiver are appointed by the court though under different statutes, the common manager u/s 95 of the Bengal Tenancy Act, the receiver under Order XL, Rule 1 of the Code of Civil Procedure. Both act under the directions of the court and subject to its control, orders and authority and, so far as management of the estate is concerned, both have the same powers and the fact that, in the case of a common manager, the title remains with the co-owners does not affect that position. Both are accountable to the court for their respective actions and are answerable to it for accounts and liable to render accounts to the court and not to the co-owners. Both, during their terms of appointment, exercise the same owners of management, subject, of course, to the control of the court, as the co-owners might have exercised but for the appointment and, so long as they continue in office, such powers cannot be exercised by the co-owners. Neither is removable except by an order of the court. Neither is an agent or representative of the co-owners in strict law although in common parlance they have sometimes been described as representatives of the parties because they, in fact, represent the co-owners in transactions, relating to the management of the estate, during the term of their appointment. But, in law, they are officers of the court which has taken charge of the property and they may be regarded as agents or Representatives of the court but not of the co-owners. No question, therefore, arises of any fiduciary relationship between a person appointed either by a common manager, appointed by the court, u/s 95 of the Bengal Tenancy Act, or a receiver appointed by the court under Order XL, Rule 1 of the Code, and the co-owners by reason of such appointment simpliciter, and, in the absence of such relationship, no claim for accounts would be maintainable in law.

9. In the above view, which follows from the provisions of Sections 95 and 98 of the Bengal Tenancy Act and Order XL, Rules 1 to 4 of the CPC and the authorities cited above, the decision of the learned Subordinate Judge ought to be affirmed.

10. Mr. Laik, on behalf of the Plaintiffs-Appellants, cited the case of Rajendra Nath Mitra Vs. Nagendra Kumar Bose, , as authority in support of his contention that, even though the Defendant''s appointment was by the common manager, the co-owners could demand accounts from him and he was liable to render accounts to them. We do not think the case cited supports any such proposition. It has not the remotest bearing on the point. All that was held in that case was that the zamindar had the right to claim outstanding moneys, admittedly due on settled accounts, from his under naib It was not a suit for accounts at all and, besides, the under naib was, in that particular case, appointed by the zamindar, and the mere fact that he worked under the naib (who had also been appointed by the zamindar) and so was called the under naib did not affect the zamindar''s right even to demand accounts from him. As the under naib was appointed by

the zamindar, he was clearly the latter''s servant and the zaminddr was his master and, as such, the under naib was liable to render accounts to him and not to the naib who was not his employer though he was certainly his superior officer. The case cited, is, therefore, utterly irrelevant, so far as the present question is concerned, and it is of no assistance to Mr. Laik.

11. A word is also necessary with regard to Harihar Mookerjee''s case (Supra) which has been relied upon by us. Mr. Laik attacked this decision upon the ground that it was based on the same reasoning as in Jotindra Narain Acharya Chowdhury v. Rajendra Kishore Das and Ors. (1908) 8 C.L.J. 114. cited in it, and that reasoning, namely, that the receiver was the agent of the proprietors who, being principal, could not demand accounts from the subsequent tehsildar, was erroneous and could not obviously apply to the case of a common manager who is, on the authorities already cited (vide supra) not an agent of the proprietors. Mr. Laik''s argument appears to be based on a misconception and it arises from a misreading of the ease, reported in Harihar Mookerjee''s case (Supra). It is manifest from that decision that their Lordships Mookherjee C.J., and Fletcher, J.) agreed with the decision in Jatindra Narain''s case (Supra)but not with its reasoning and they based their decision upon the view that the receiver was an officer of the court and not a representative and, therefore, not an agent, of the proprietors (vide also Harihar Mookerji and Anr. v. Harendra Nath Mookerjee (1910) 12. C.L.J. 252. The common manager''s position, as we have endeavoured to show above, is in no way different. Thus Harihar Mookherjee''s case (1) appears to have been rightly decided and, on principle, it is an authority against Mr. Laik''s contention.

12. It was finally argued by Mr. Laik that Tara Sankar Mukherjee, who was the common manager and by whom the Defendant was appointed and under whom he worked, was also one of the Plaintiffs, namely, Plaintiff No. 4, and the suit for accounts was maintainable, at least, by him. As we have already said, however, Tara Sankar has not sued and does not claim to have sued as the ex-common manager and, besides, he has not appealed against the dismissal of the suit by the lower appellate court. From this latter fact, it may not be improper to hold that Plaintiff No. 4 Tara Sankar has abandoned his claim for accounts against the Defendant and, in any event, he not having appealed against the dismissal of the suit by the lower Appellate court, no decree can be passed in his favour, even if the suit was maintainable at his instance. In these circumstances, this argument of Mr. Laik cannot be of any avail to the Appellants before us.

13. We, accordingly, dismiss this appeal. The parties, however, will bear their own costs in this Court and also in the courts below as ordered by the lower Appellate court.

14. In view of the dismissal of the appeal which means the dismissal of the suit, no order is necessary on the cross-objection. We do not, therefore, express any opinion on its merits or maintainability.

V.K. Sarkar, J.

15. I agree.

