
(1946) 04 CAL CK 0028

In the Calcutta High Court

Case No : Civil Rule Nos. 1996 and 1997 of 1945

Govinda Chandra Chakravarty and another

APPELLANT

Vs

Brojendra Mohan Maitra and another

RESPONDENT

Date of Decision : 15-04-1946

Acts Referred:

Citation : (1946) 04 CAL CK 0028

Judgement

B. K. Mukherjea, J.—The facts giving rise to these two connected revision cases may be briefly stated as follows: On 11th July 1933 a promissory note was executed by the opposite parties to these rules in favour of Kaviraj Haran Chandra Chakravarty as shebait of the deity Anandamoyi Thakurani. Shortly after this, the Kaviraj died leaving behind him six sons and a will. The application for probate was hotly contested, but during the pendency of these proceedings, the six sons made up their differences and a deed of family settlement was executed by and between them on 10th September 1935 and one term of this deed of settlement was that the money due on the promissory note mentioned above was to be treated as secular property of Haran and would be allotted to four of his sons viz., Ramesh, Gobinda Narayan and Sachindra. Sometime after this, in February 1936, the opposite parties paid a sum of Rs. 250 to each of the two sons, Sachindra and Gobinda as interest due on the promissory note mentioned aforesaid. There were certain litigations between the sons over this deed of family arrangement which it is not necessary for me to refer to in detail. Eventually, however, the deed of family settlement was upheld by this Court in appeal from Original Decree No. 176 of 1940.

2. In 1941, Jogadish Chandra Chakravarty, a shebait of the deity, instituted a suit with the permission of this Court for recovery of the money due on the promissory note, and to this suit Gobinda and Sachindra were inter alia made pro forma defendants. The opposite parties did not raise any point in their written statement claiming deduction of a sum of Rs. 500 which was paid to Sachindra and Gobinda. The Court of first instance gave a decree in favour of the deity represented by the shebait for the entire amount that was recoverable under the

Bengal Money-lenders Act, the money being directed to be paid in 18 yearly instalments.

3. There was an appeal taken against this decision to this Court by the shebait and it was directed only against the number of instalments allowed by the Court below. Pending this appeal, appeal from Original Decree No. 176 of 1940 was disposed of by this Court, and the money due on the promissory note being declared to be the secular property of Haran and payable to his four sons, these four sons were transposed to the category of the appellants and a decree for the amount allowed by the trial Court was made in their favour and the number of instalments was reduced from 18 to 10.

4. In 1945, two suits were brought by the opposite parties, one against Gobinda, the petitioner in Rule No. 1996 of 1945, and the other against Sachindra, the petitioner in Rule No. 1997 of 1945, claiming refund of Rs. 250 from each one of these defendants on the allegation that these sums of money being paid on account of interest on the promissory note and no discharge being given in respect of the same the plaintiffs were entitled to have refund of these amounts from these defendants. The learned Small Cause Court Judge has decreed both the suits and against these two decrees, these two rules have been obtained by the two defendants.

5. Two questions of law primarily arise for consideration in these two rules, one being the question of res judicata and the other of limitation. Regarding res judicata the Small Cause Court Judge has held that there was no res judicata in the present cases in as much as there was no duty on the part of the opposite parties to claim reduction of the amounts paid by them to the petitioners in Money Suit No. 1 of 1941. It is to be noted that the petitioners were arrayed as parties defendants to that suit along with the opposite parties; the position taken up by the opposite parties is that the money was paid to the petitioners on the basis of the family settlement under which they along with the other two brothers were entitled to realise this money, but as the suit was instituted against these opposite parties not by the secular owners, but by the deity, there was no duty on their part to set up that payment in part reduction or the plaintiff's dues.

6. It is argued on the side of the petitioners that, at any rate, they ought to have set up these payments when these petitioners along with the other two brothers were transposed to the category of the appellants in the appeal filed against the decree in the money suit. To that the reply given is that they were not really transposed to the category of the plaintiffs, and, in any event, there was no alteration in the pleadings of the parties, and no opportunity was given to them to put in any further written statement. Be that as it may, I am not inclined to hold that the decision of the Court below on the question of res judicata is wrong.

7. It seems to me, however, that on the question of limitation, it is difficult to justify the decision of the Court below. The position taken up by the opposite

parties is that as the money was paid to the petitioners on the basis of the deed of family settlement under which they were to be the rightful owners of this promissory note, they could not claim a refund of the money till the money suit was instituted against them by the shebait contrary to the terms of the family settlement I am quite willing to concede that the cause of action did arise from the date when Money Suit No. 1 of 1941 was instituted and from that date onward the petitioners had no right to retain the money which they were bound to hold to the use of plaintiffs; but even then it seems that the suits ought to have been brought within three years from that date, and I am extremely doubtful whether Art. 120, Limitation Act, which is invoked by Mr. Choudhuri really applies to the facts of the present cases.

8. I think, however, that although there has been a misapplication of the law of limitation by the Court below, no injustice has been done in these cases which calls for my interference under S. 25, Provincial Small Cause Courts Act. There is practically no answer to the claim of the plaintiff. The money was admittedly paid and the defendants have no justification for retaining the money.

9. As the powers of revision under S. 25, Provincial Small Causes Court Act are discretionary, and, in my opinion, apart from any injustice being done as a result of the decision of the Court below, injustice will certainly result if I interfere with and set aside the decision of the Court below. I decline to interfere in these cases and discharge these Rules. I make no order as to costs in this Court.