

(1892) 03 CAL CK 0008
In the Calcutta High Court

Grish Chunder Mukhopadhyaya	Vs	APPELLANT
Aghore Nath Mukhopadhyaya		RESPONDENT

Date of Decision : 04-03-1892

Acts Referred:

Citation : (1893) ILR (Cal) 18

Hon'ble Judges : Pigot, J; Macpherson, J

Bench : Division Bench

Judgement

Pigot and Macpherson, JJ.—These are appeals from an appellate decree. The plaintiff and the defend-ants are the sons of Kashi Nath Mukhopadhyaya, who died in 1280. From 1280 to 1289 the plaintiff and defendant No. 1 were managers of the family. Plaintiff alleges that in 1287 and in 1289 he raised money to pay certain necessary family expenses, including Government revenue and municipal taxes. This money he says he raised on promissory notes, two made in Assar 1287 and one in Assar 1289; the aggregate amount of them is stated in the plaint at Rs. 400, one of those in Assar 1287 being in favour of plaintiff's wife, Mukshoda : the other two being in favour of Durga Das, her uncle.

2. The holders of these notes sued the plaintiff on them in 1888 and obtained three decrees against him for the amount of the notes, interest and costs, being the sums mentioned in the schedule to the plaint, amounting in the aggregate to Rs. 1,081-12-0.

3. The plaintiff then brought this suit, claiming from each of the defendants a 4-anna contribution to the amount paid by him under these decrees with interest from the date of the decrees, viz., June 6, 1888.

4. The appellants in the two appeals before us, namely, defendants 2 and 3, denied their liability, denied that the money was raised for family purposes, denied that the decrees against plaintiff were obtained in good faith, and denied that any money would be due to plaintiff on accounts being taken of his management. They did not set up limitation in either of the Lower Courts.

5. Both the Courts below decided against the defendants on the merits, and gave the plaintiff a decree. In the appeal before us it is contended that the plaintiff's claim, if any, is barred by limitation.

6. The cases of *Ram Kristo Roy v. Muddun Gopal Roy* 12 W.R. 194 : 6 B.L.R. Ap. 103 and *Sunkur Pershad v. Goury Pershad* ILR 5 Cal. 321 were cited to show that where money is borrowed on the personal security of the manager of a Hindu family for family purposes, and is applied by him to those purposes, his right to contribution arises when he expends the money, and limitation runs against his claim from that date, and not from the date at which he pays the person from whom he borrowed, and thus releases his security.

7. It seems to us that the question is not merely one of limitation, but that a question in the case also arises as to the nature of the plaintiff's right of action. It seems to be the plaintiff's case that if the money was borrowed for necessary family expenditure it follows that the plaintiff, if he raised the money on his personal security, was entitled, by reason of his discharging that debt, to claim contribution; that is to say, that his personal debt, if contracted to enable him to defray expenses common to him and the other members of the family, became thereby a family debt itself. We do not think that this notion is right: it is inconsistent with the authorities just referred to.

8. No doubt the members of the family might have agreed with the plaintiff that if he should raise the money in this manner, they would contribute towards the discharge of the liability so incurred by him; but in the absence of such an agreement, or of any adoption by them of his act as their own, we are unable to see that any obligation was created on their part towards him, by reason of his having satisfied the decrees under which he was alone liable.

9. We do not think that the proceedings in the partition suit, No. 66 of 1886, can be held to have had the effect of making any of the parties to that suit liable to recoup the plaintiff as adopting as their own (as between them and him) the debt under his promissory notes. There was no adjudication in that suit as to the debts referred to in the petition of the 6th June 1887, amongst which, no doubt, those of Assar 1287 were included. It would be giving too strict an interpretation to the terms of that petition to hold that thereby the parties to it other than the plaintiff adopted and ratified as their act the making of the notes. It lay on the plaintiff to show that this was the meaning and intention of the defendant Aghore Nath when he joined in that petition. By itself, it is too ambiguous to justify us in attributing that effect to it; it may have been a mere oversight that the amount then due for interest on the notes was included as part of the family debt.

10. But we think that, apart from this, the plaintiff had no authority to bind the defendants by the part payment of 1886 so as to prevent the notes from being barred, and so render a decree against him possible.

11. The result is that, except so far as the plaintiff did pay any of the money raised by him for family necessities, he has no cause of action; it is admitted that

such payment (if made) was made so long ago that any claim founded upon it is long since barred by limitation. The suit therefore wholly fails, and the appeal must be allowed. We set aside the decree of the Lower Appellate Court and dismiss the suit with costs in all the Courts.