

(1925) 05 AHC CK 0037
In the Allahabad High Court

Jagannath Prasad and Another

APPELLANT

Vs

Jugul Kishore and Others

RESPONDENT

Date of Decision : 22-05-1925

Acts Referred:

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

Citation : AIR 1926 All 89 : (1926) ILR (All) 9

Final Decision : Dismissed

Judgement

1. This appeal has been described to us at the opening of the arguments as a decree-holder's appeal, but as a matter of fact, it is hardly in this capacity as a decree-holder that the appellant initiated these proceedings at all. The case has occupied a very long time in argument as certain facts were not brought to our attention until the extreme end of the hearing. It may really be decided briefly. The appellant before us appeals from an order of the lower appellate Court upholding an order of the first Court dismissing his application under Order 40, Rule 4 Civil P.C. The appellant had been a party to some criminal and civil litigation in the course of which certain moveable property, which was in dispute had been entrusted, apparently in a more or less irregular manner, to one Shib Charan Lal whom we may for the purposes of this case only, describe as a Receiver. He had apparently occupied some such position in the criminal litigation under Ch. 12 of the Criminal P. C, and irregularly succeeded to some sort of a similar position in the civil litigation. The civil litigation was a suit for partition and at the end of it the present appellant believed that the Receiver had misappropriated some of his property and he was unable to extract it. For our present purposes his earlier efforts need not be mentioned; but on the 27th of August 1913 he applied for attachment and sale of the property of the sons of Shib Charan Lal. The defences, as is generally the case in such proceedings, were various, but one of the defences was that the property in the hands of the sons was not liable for the debt of the father, that debt having its origin in "embezzlement." Both Courts have dismissed his application finding, that there had been "misappropriation" on the part of the father. We have been referred to

many cases as to what constitutes "immorality" of a debt so as to enable the sons to escape liability therefor. We think that the test to be applied in a case of the kind now before us is whether or not the action of the father which resulted in the debt, was infected with an element of criminality. Whether such an element is established or not and the degree of infection which will support a plea of immorality" must be a question for determination on the facts of each case; and though a conviction for misappropriation or other cognate offence may be good proof of such element, proof of a previous conviction is certainly not essential. The criminality and its degree may be inferred from a consideration of the whole facts. If there was such an element it has been regarded, at any rate, by this Court as an immoral debt; otherwise, if there was no such criminal element. For the former proposition we may refer to the case of Mahabir Prasad v. Basdeo Singh (1884) 6 All 234 and for the latter to the decisions reported as Niddha Lal v. Collector of Bulandshahr (1916) 14 ALJ 610 and Subhaddi Lal v. Gobind Singh AIR 1924 All 742. Of the many cases we have considered of other Courts none appears to be in conflict, at any rate, with this principle.

2. In the present case both the lower Courts have found that the father "misappropriated," and we were for some time in doubt in view of the language used in some cases as to whether we should regard this as a finding of criminal misappropriation or as one which possibly indicated no more than civil liability. Any doubt that we might have had has, however, effectively been removed by our being referred to para. 9 of the application of the present appellant which initiated the present stage of these proceedings on 24th January 1922 (Paper No. 888 C). That was his application under Order 40, Rule 4, Civil P.C. In that paragraph he himself relied on the fact that the father, Shib Charan Lal, had been prosecuted (apparently at the instance of the appellant), for criminal breach of trust and complained that Shib Charan Lal had been acquitted owing to an improper interference with the criminal Court by the civil Court. In view of these allegations it is impossible to allow the appellant now to urge that the finding against him, that the father misappropriated property, is not a finding that he misappropriated that property criminally. This, to our minds, is sufficient to conclude the appellants' rights in this appeal. The finding, as we interpret it in the light of the appellants' own interpretation, is that the respondent's father has incurred "this debt by committing criminal misappropriation. That brings the case within the principle of Mahabir Prasad v. Basdeo Singh (1884) 6 All 234 and this appeal must fail. It is accordingly dismissed with costs including in this Court fees on the higher scale.