
(1898) 11 AHC CK 0005
In the Allahabad High Court

Jamna Das and Another

APPELLANT

Vs

Udey Ram and Others

RESPONDENT

Date of Decision : 11-11-1898

Acts Referred:

Citation : (1899) ILR (All) 117

Hon'ble Judges : Dillon, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Burkitt and Dillon, JJ.—This suit was one to recover a debt alleged to be due by the defendants Nos. 1 and 2 to one Sri Kishan Das, defendant No. 3 in the array of parties, by virtue of an assignment from the said Sri Kishan Das. The debt had originally been assigned by Sri Kishan Das to the defendants Nos. 4 and 5, Jumna Das and Lachmi Narain, the present appellants; but it was alleged that these defendants Nos. 4 and 5 had failed to perform the conditions upon which the assignment to them had been made, that the assignment was thereupon cancelled and a new assignment in favour of the plaintiffs was substituted. The material issues framed by the Court of First Instance upon the pleadings of the parties were:--(1) Upon what condition was the debt assigned to the defendants Nos. 4 and 5? (2) Had that assignment become void by reason of any default on the part of the defendants Nos. 4 and 5? The Munsif found that the assignment had been made to these defendants upon certain conditions; that they had not fulfilled those conditions, and that therefore the assignment to them had become void. The Munsif accordingly, in pursuance of those findings, gave a decree in favour of the plaintiffs against the defendants Nos. 1 and 2, whose debt had been assigned to the plaintiffs by Sri Kishan Das, the third defendant. The decree drawn up in pursuance of the judgment containing the findings mentioned above was as follows:--"It is ordered and decreed that the claim for Rs. 790-3-0, with future interest at 8 annas per cent, per mensem, be decreed against the defendants Nos. 1 and 2. The plaintiffs and the defendants Nos. 1 and 2 shall

recover their costs from Sri Kishan Das, defendant No. 3. The other defendants Nos. 4 and 5 shall bear their own costs." The defendants Nos. 4 and 5 appealed against that decree, but the Lower Appellate Court (Subordinate Judge of Cawnpore), on a preliminary objection raised before it by the respondents, refused to hear and dismissed the appeal, on the ground that no portion of the claim had been decreed against the appellants. He held in effect that the decree as drawn up did not damage the appellants. These appellants have now come to this Court in second appeal, contending that the Lower Appellate Court was wrong in holding that they had no right of appeal.

2. For the respondents it has been contended, as before the Lower Appellate Court, that the appellants should have made an application to the original Court u/s 206 of the Code of Civil Procedure, and should have procured an entry in the decree of the finding that their assignment had become void.

3. In our opinion the decision of the Lower Appellate Court which gave effect to that contention is wrong. We are unable to perceive any variance between the decree and the judgment which the appellants could have asked the Munsif to remedy. The decree as it stands does, in our opinion, fully and necessarily imply a finding that the appellants' assignment had become void, inasmuch as, but for the existence of such a finding, a decree could not have been given in favour of the plaintiffs, who admittedly were but subsequent assignees the debt originally assigned to the appellants.

4. Under these circumstances we think the decree of the Lower Appellate Court was wrong. We allow this appeal. We set aside the decree of the Subordinate Judge, and, as his decree proceeded upon a preliminary point and as we have overruled his decision upon that point, we remand the case for trial upon the merits u/s 562 of the Code of Civil Procedure. The appellants will have their costs of this appeal in any event.