
(1927) 02 AHC CK 0029
In the Allahabad High Court

Kishori Lal, Makundi Lal

APPELLANT

Vs

Jauhari Mal and Another

RESPONDENT

Date of Decision : 21-02-1927

Acts Referred:

Citation : AIR 1927 All 436

Hon'ble Judges : Boys, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Boys, J.—The plaintiff came into Court with very clear allegations that he had instructed the defendants who were commission agents, to purchase certain castor seed on account of the plaintiff, that the defendant had as result of the transaction made a secret profit of Rs. 1,100, with which they ought to have credited the plaintiff. He alleged that the defendants had actually sold the castor seed on the 7th of August 1919, but he said further that, though he knew of the sale of the castor seed, he did not know that the defendants had made a secret profit out of that sale until the 14th of August 1922. when in a suit brought by the defendants for, money they alleged to be due to them from the plaintiff, the defendants' munib gave evidence, and as a result of that evidence the plaintiff says it came to his knowledge that the defendants had made a secret profit. Both Courts have dismissed the plaintiff's suit holding that assuming Article 90 to be the appropriate article of the Limitation Act, the suit was barred by limitation because, as both Courts put it, the plaintiff knew of the defendants' "misconduct" as early as the 7th of August 1919. If the 7th of August 1919 was the date from which the period of limitation began to run, then the suit was clearly barred because it was not filed till the 29th of March 1923. We think, however, that both Courts have misconceived the basis of the plaintiff's alleged case." The plaintiff was not suing for damages for misconduct in that the defendants had wrongfully sold his castor seed, a fact which came to plaintiff's knowledge on the 7th Of August 1919, but he was suing in regard to the,

misconduct of the defendants in that they made a secret profit and concealed that profit from the plaintiff. The crucial date, therefore, has not the date on which it came to the plaintiff's knowledge that the defendants had sold his castor seed but the date on which it came to his knowledge that the defendants had made a secret profit. This distinction neither Court has borne in mind. Counsel for the respondents has not been able to show us any evidence conclusively pointing to: the fact that the plaintiff had knowledge of this secret profit at some date more than three years prior to the date of the suit. We set aside the decrees of both Courts and remand the case to the Court of first instance for determination of the question:

On what date did the misconduct of defendants in making a secret profit become known to the plaintiff?

2. Having determined that question the Court will proceed to decide the issue of limitation and, in the light of its decision on that issue and the decisions at which it has already arrived on the other issues, dispose of the case according to law. The costs hitherto will abide the result. The plaintiff before us abandons his whole claim in reference to the gunny bags. In paragraph 4 of his plaint plaintiff expressly alleged that, the making of the secret profit only came to his knowledge on the date when the defendants' munib deposed in Suit No. 175 of 1922. Both parties have, therefore, already had full opportunity of placing their respective cases before the Court and they will not be at liberty to produce any further evidence.