

(1932) 03 AHC CK 0001
In the Allahabad High Court

(Lala) Chandi Ram and Others

APPELLANT

Vs

(Lala) Kunj Behari Lal and Others

RESPONDENT

Date of Decision : 03-03-1932

Acts Referred:

Citation : AIR 1932 All 383

Hon'ble Judges : Mukerji, J

Bench : Division Bench

Judgement

Mukerji, J.—This appeal raises an interesting question of law of contribution in the following circumstances:

One Rani Durga Kunwar was in possession of her husband's estate. She granted a lease of a portion of the estate in favour of the plaintiffs one of whom has since died and has been succeeded by his legal representatives. She granted another lease in favour of the ancestors of the respondents, the defendants in the case. One Kunwar Anand Singh claimed the entire estate in the hands of Durga Kunwar and her transferees on the allegation that he was an adopted son of the Rani's late husband. During the pendency of the suit Rani Durga Kunwar died. The suit succeeded ultimately and the decree that was made as regards costs was that a sum of Rs. 3,400 should be paid to the plaintiff by the present parties and out of the estate, if any, of the late Rani Durga Kunwar. Rani Durga Kunwar left no property out of which any costs could be recovered. The present plaintiffs, thereupon, the entire costs having been realized from them by Anand Singh, sought to recover one-half of the costs recovered from them from the defendants.

2. The first Court decreed the claim. There was an appeal by the defendants and the learned Judge reduced the claim to a sum of Rs. 826. The argument that found favour with the learned District Judge was this. There were really three defendants against whom the suit had been decreed. The interest of each defendant was separate and was valued as follows : The plaintiffs' interest was valued at Rs. 17,319 being the value of the property in their possession; the defendants' interest was valued at Rupees 21,540 being the value of the

property in their possession; Rani Durga Kunwar's interest was valued at Rs. 50,000 odd, the total estate having been valued at Rs. 88,930. The learned Judge held that; each party should contribute to the costs in proportion to the property held by it out of the estate in suit. To calculate on that basis the plaintiffs were granted a decree for 2,154/8,893 out of Rs. 3,400. In other words, the defendants were made liable for a portion of the costs proportionate to the amount of property held by them.

3. We think that the method adopted by the learned District Judge was correct. There were three parties liable for the costs and if one of them was unable, from poverty or otherwise, to pay the costs, it was no reason why that party's share or a portion of it should be recovered from any other party.

4. In the result, the appeal fails and is hereby dismissed with costs including counsel's fees in this Court on the higher scale.