(1921) 07 AHC CK 0043

In the Allahabad High Court

Lala Ram Kumar APPELLANT

Vs

Nem Chand and Others RESPONDENT

Date of Decision : 06-07-1921

Acts Referred:
Companies Act, 1882 — Section 4

Citation : AIR 1921 All 73 : 64 Ind. Cas. 447

Hon'ble Judges : Lindsay, J;Gokul Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The plaintiff is the appellant here and his suit has failed in both the Courts below on the ground that it was barred by limitation.

2. In our opinion the finding of the Courts below on the question of limitation is correct, We think the suit was time-barred.

3. The suit was one of a somewhat peculiar nature. The plaintiff name into Court alleging that his grandfather and a number of other persons, exceeding 20, had in the year 1898 combined together for the purpose of starting a cotton press and ginning factory. All the persons, who took part in the formation of this business, contributed capital to the undertaking and in substance the suit of the plaintiff now is for the return of the capital which was subscribed by his grandfather, who appears to have taken a principal part in launching this business.

4. The plaintiff founded his case on the plea that the number of persons who joined in starting this business being in excess of 20, the association was an illegal one with reference to Section 4 of the old Companies Act of 1882. The law is the same under the present Companies Act of 1913. It was alleged that the plaintiff had been pressing the other partners in the business to get the Company registered and as they refused, the plaintiff brought this suit in which he asked for the following reliefs:

(1) A declaration that the partnership now being carried on is illegal; and

(2) an order that the property belonging to the partnership should be brought to sale and out of the sale proceeds, the plaintiff should be paid the capital which his grandfather put into the business.

5. There was a good deal of dissuasion in both the Courts below as to whether a suit of this kind was maintainable. Clearly with reference to Section 4 of the Companies Act referred to above, the association is one which is prohibited by law. Both the learned Judges of the Courts below seemed to think that a suit for the return of the capital sub-scribed by the plaintiff was not one which could be maintained.

6. It is, however, not necessary for us to decide this question. We will assume in favour of the plaintiff that such a suit is maintainable. The question arises then as to what period of limitation is to be applied to cases of this kind. In substance the cause of action for the suit is the fact that the plaintiff''s grandfather parted with certain money in order to form a society or business which is prohibited under the Companies Act. The return of that money is sought on the ground that the money was paid for an illegal object. In this view of the case it seems to us the cause of action for return of the money must have accrued as soon as the money was paid, and we cannot accede to the argument that there was a continuing cause of action in plaintiff''s favour. The limitation, in our opinion, must be taken to have run from the date on which the plaintiff''s grandfather parted with this money and as that was about twenty years before the suit was brought, the bar of limitation applies. The appeal fails and is dismissed with costs, including in this Court fees on the higher scale.