

(1938) 02 PAT CK 0020
In the Patna High Court

Mathura Sao

APPELLANT

Vs

Ram Lal Jugal Kishore Firm and Others

RESPONDENT

Date of Decision : 14-02-1938

Acts Referred:

Citation : AIR 1938 Patna 400

Hon'ble Judges : Wort, J

Bench : Division Bench

Judgement

Wort, J.—This appeal arises out of an action on bahi-khata account for a sum of Rs. 741-8-0. The points which have been argued and the decision with regard to them will appear from a statement of facts as regards the course of the action in the Courts below. Plaintiff sued the defendants as being members of a joint business. Defendant 4 filed a written statement late which was rejected, and therefore it was left to defendants 1 to 3 to defend the action. It is defendant 3 that we are concerned with in this Court and his case was made to depend on the fact that he had separated sometime since from the other members of the family and therefore he was not liable. Alternatively he raised the question that the money advanced was not for legal necessity. There can be no dispute as regards that question when once it is established that the defendant was the member of the family, because it was with regard to the purchase of goods for the carrying on of the business that the debt had been incurred. It was hardly open to the defendant in those circumstances to contend that the debt was not for necessary purposes, and as I said and repeat that the defendant made his case to depend upon the fact that he had separated and his liability therefore ceased. The Judge in the Court below has expressed himself somewhat unfortunately if passages from his judgment are taken from their context. He indicates that the onus was on the defendant to show that the business was not a family business. But that criticism can only be levelled against the judgment of the Judge in the Court below if the passage is taken from its context, because he is careful to state that it was admitted by defendant 3 that prior to the separation the business existed. In those circumstances it is impossible to hold

that the Judge has wrongly placed the onus on the defendant.

2. Mr. Sarju Prasad refers to a decision of their Lordships of the Judicial Committee of the Privy Council being the case in AIR 1934 4 (Privy Council) That was an appeal arising out of an action on two promissory notes signed by the karta defendant and the argument of the appellants before their Lordships of the Judicial Committee was that the presumption was that it was for necessity or to put it in the words of the argument as reported, as the evidence established that Pandurang was carrying on the joint family business, he had authority to borrow for the purposes of the business and the presumption of fact was that the money was properly borrowed for that purpose. But, as Lord Thankerton in delivering the judgment of the, Board pointed out, the fact that Pandurang had signed the promissory notes in his own name was consistent with his own personal liability as it was consistent with the liability of the joint family, and the person who sought to charge the joint family firm had the onus upon him to prove such facts as would discharge that onus; and that onus was upon the plaintiff. It is true that the onus was on the plaintiff here but having regard to all the circumstances of the case the Judge was correct in coming to the conclusion at which he arrived.

3. The other point was that the amendment as regards the names of the plaintiffs was allowed in the appellate stage and that the Judge was wrong in law in allowing such amendment. It is admitted that the amendment having been made the action is in order. Having regard to the clear provisions of the Civil Procedure Code, in my judgment, the contention is an impossible one.

4. It is for the Judge to consider whether in the circumstances of the case the amendment should be allowed; and, having rightly come to the conclusion it did not alter the substance or nature of the action but merely its form, the Judge was not in error in allowing the plaintiff to amend even at the appellate stage.

5. There is one other matter which has been argued and that is as regards the first sum, Rs. 449, for which there was an acknowledgment on 28th October 1932. But this was merged into a later sum of Rs. 699, also the subject-matter of the acknowledgment, and again that larger sum was merged into Rs. 741, the sum in dispute in the action. Once it was established there was liability on the defendant as regards Rs. 741, the liability as regards the earliest sum necessarily followed.

6. The appeal fails and must be dismissed with costs. Leave to appeal is refused.