

(1928) 09 CAL CK 0002
In the Calcutta High Court

Nalini Kumar Chakrabartty

APPELLANT

Vs

Gadadhar Choudhury and Others

RESPONDENT

Date of Decision : 11-09-1928

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 4, 80

Citation : AIR 1929 Cal 418

Hon'ble Judges : Rankin, C.J; Mukerji, J

Bench : Full Bench

Judgement

Mukerji, J.—The plaintiffs are zemindars of Kanchanpur, and are proprietors of certain properties mentioned in the plaint. With the consent of all the cosharer proprietors, one Rash Behari Roy was appointed common manager under the provisions of the Bengal Tenancy Act in respect of the said properties in the year 1912. Rash Behari Roy having resigned, one Rai Sahib Monomohan Guha, who was defendant 3, in "the suit was appointed common manager by an order passed by the District Judge on 8th May 1916. Defendant 4 Nalini Kumar Chakrabartty was working in the estate from sometime before as a sub-manager. Prior to his resignation, Rai Sahib Monomohan Guha took leave on 16th January 1920 when he was allowed to leave the station on making over charge of his office to defendant 4. In February 1920 notices were issued inviting applications for filling up the vacancy. Defendant 4 carried on the duties of a common manager. On 1st April 1920 the District Judge passed a further order empowering defendant 4 to perform the duties of common manager until further orders. In the meantime Rai Saheb Monomohan Guha tendered his resignation, and on the other hand the proprietors or some of them applied to have the estate released. On 31st May 1920 an order was passed by the District Judge accepting the resignation of Rai Sahib Monomohan Guha with effect from 17th. April 1920, and declaring that the estate was thereby released to the proprietors. Defendant 4 was thus in charge of the office of common manager from 16th January 1920 till 31st May 1920. During the period, on 1st April 1920 the District Judge called upon defendant 4, as common manager, to submit accounts for the years 1325

and 1326. Defendant 4 submitted the accounts of 1325 while he was yet in office. After the estate was released he submitted some further accounts down to the date of the release.

2. Defendant 1 was a Naib appointed by defendant 3 while the latter was common manager, and defendant 2 was an assistant to defendant 1. In the accounts submitted by defendant 4 after the release, as aforesaid, two sums of money i.e., as Rs. 6,379.2-5 and Rs. 3,021-10-2g were shown as being with defendant 1 the former as how lat taken by him and the latter as cash in hand. The accounts were audited and were passed by the District Judge in the usual way. On 30th May 1923 the present suit was instituted against defendants 1 and 2 as principal defendants and defendants 3 and 4 as pro-forma defendants. It is necessary to set out the scope and character of the suit as originally framed in order to appreciate the nature of the controversy with which we are concerned and which is to all intents and purposes a more recent development.

3. The plaint, as originally laid, was in its essence, a suit for accounts against, and for recovery of money not accounted for or taken as loan, by defendants 1 and 2. The claim was valued at Rs. 2,100. The gravamen of the charge was against defendants 1 and 2. It was, however, alleged that the appointment of defendants 3 and 4 as common manager was illegal and ultra vires, and that it was not known to the plaintiffs whether defendants 1 and 2 had rendered any accounts to defendants 3 and 4, that defendants 3 and 4 had not rendered accounts nor explained the books of the period during which they had acted as common manager to the plaintiffs after the estate had been released, and in the return of the accounts which defendant 4 had filed for the period down to the date of the release of the estate the items of Rs. 6,379 and odd and Rs. 3,021 and odd had been shown as already stated above. The reliefs asked for in the plaint are quoted below in extents:

(a) For a decree that defendants 1 and 2 be ordered to file correct accounts in Court and to render those accounts.

(b) For the appointment of a commissioner to examine the accounts filed by the defendants and for a decree in favour of the plaintiffs after taking proper Court-fees for the amount for which they are held liable and for ordering the amount to be recovered out of the properties secured by defendant 1 by his indemnity bond also out of the sum kept in deposit by defendant 2 and also from the other properties of defendants 1 and 2.

(c) For a decree that defendants 1 and 2 be ordered to file all the papers during the period of their services as Naib if they did not file them to defendants 3 and 4 or that defendants 3 and 4 be ordered to file the papers in Court if defendants 1 and 2 gave them those papers.

(d) If defendants 3 and 4 state or if it be proved that defendants 1 and 2 have rendered nikash and made over the amounts due from them to defendants 3 and 4 from defendants 1 and 2 then for a decree in favour of plaintiffs and against

defendants 3 and 4 for such amount as may be recoverable under the nikash.

And (e) For costs with future interest and for any other relief to plaintiffs such as they may be found entitled according to law and equity,

The plaint is anything but clear and it is not without considerable difficulty that any foundation of the liability of defendants 3 and 4 can be made out. Putting the construction most favourable to the plaintiffs, all that can be gathered is that it is defendants 1 and 2, who are primarily liable; but that defendants 3 and 4 are to be held liable only if they have received any money or papers from defendants 1 and 2, and have withheld the same.

Written statements were then filed on behalf of the defendants. In the written statement which defendant 4 filed he stated that the returns which defendant 1 had submitted of the period of his work were incorrect and incomplete and explanations that he had given of his accounts were unsatisfactory, and that for this reason defendant 4 was obliged to show in the accounts that he submitted to the District Judge the said two items as being with defendant 1, one as how lat. and the other as cash in his hands.

The plaintiffs thereafter applied for amendment of the plaint, and as a result of the amendment that was allowed, the following two prayers were added:

(f) If the principal defendants be not found liable for rendering accounts or if there be any bar to plaintiffs getting a decree for accounts then for a decree in favour of the plaintiffs and against the principal defendants for the amount that may be found due after deducting reasonable-costs from Es. 6079-6-5J pies marked as-loan and Es. 3021-10-2 pies marked as deposit in the hands of defendant 1 after-taking from plaintiffs the proper Court-fees for the same

and (g) for passing a decree in favour of plaintiffs and against the pro-forma defendants for the amount claimed by plaintiffs or for the amount that the plaintiffs be held entitled to get from the pro-forma defendants as damages-How the question of damages could at all come in the suit upon the facts alleged in the plaint, I confess I have not been-able to appreciate. It would of course-arise on the supposition that defendants-3 and 4 had failed to take the money from defendants 1 and 2 as they were bound to do, but no such case appears to have been made anywhere.

4. The suit was tried by the Subordinate-Judge who dismissed it holding that the plaintiffs had no cause of action. The District Judge on appeal by the plaintiffs decreed the suit against defendants 1. and 4. He dismissed the suit in so far as it was against defendants 2 and 3, holding that defendant 2 had no liability to render accounts to the plaintiffs and that the suit as against defendant 3 was barred

5. Defendant 4 has then preferred this appeal. The contentions urged on his behalf are mainly three :?In the first place it is contended that as he was a common manager appointed by the District Judge the suit as against him was

not maintainable without a notice u/s 80, Civil P.C Next, it is urged that as the accounts submitted by him were passed by the District Judge, there was no further liability on his part to render any accounts. Lastly, it is said that there is no proper basis for the decree that has been passed as against him.

6. I propose to deal with the last contention first, because in the view that I take of it, it is not necessary to go into the other two contentions and the answer that has been given to them on behalf of the plaintiffs-respondents. In the appeal before the District Judge the plaintiffs confined their claim to accounts as against all the defendants to the two particular sums mentioned above. The District Judge has expressly said so in his judgment. All that the District Judge has said in his judgment as the basis for the decree against defendant 4 is this:

I do not consider that the District Judge had any authority to investigate these accounts (meaning-the accounts submitted by defendant 4) and the fact remains that the position with regard to the two sums of money entered in the nikash as outstanding against Saroda Charan Sirkar (i.e. defendant 1) remains unexplained. Each page is signed by Nalini Kumar Chakrabarty, (i.e., defendant 4) and I consider it essential that he should be a party to any further investigation which may take place with regard to these items. My finding with regard to defendant is therefore that he is liable to render proper accounts to the plaintiffs... As regards defendants 1 and, I set aside the order and decree of the lower Court and order that a preliminary decree be passed against defendants 1 and 4 to the effect that an account be taken regarding the two sums of money, namely, Rs. 6,379-2as-5g and Rs. 3,021-10as-2g mentioned in para 4 of the plaint and a commissioner be appointed for making the necessary investigation into the matter. It is further ordered that for the purpose of the investigation the parties concerned produce before the commissioner all papers in their possession with regard to the two sums in question.

7. The whole basis of a decree for accounts is a liability on the part of the defendant, to account. A finding that it would be convenient to have the accounts examined in the presence of the defendant will hardly suffice to make the defendant a party liable to account and on that consideration only he cannot be made a party to any investigation that is to be held by commissioner. In the present case I am unable to find that there is any other reason why defendant 4 should be a party to any other proceedings that have been ordered to be held by the commissioner. The plaintiffs' suit has proceeded so far on the footing of defendant 4 having been a common manager and having submitted accounts showing the two specified sums as being in the hands of defendant 1. Learned advocate for the plaintiffs-respondents has conceded before us that his clients are not proceeding in the present suit against defendant 4 on the footing of his position as sub-manager. Nothing has been established, nor indeed has anything been alleged, which may indicate that there was any liability on the part of defendant 4 to account for these two sums. It has never been alleged, far less attempted to be proved, that the two sums or any portions thereof ever came

into the hands of defendant 4. It has been argued that defendant 1 may, in the course of the investigation that is to be held by the commissioner, be able to show that he paid amounts or parts of them to defendant 4. Such, however, is not the defence of defendant 1. It has also been argued that the commissioner may find in the course of his investigation that that was the position. But, as pointed out in the case of Bharat Chandra Chakrabarty Vs. Kiran Chandra Rai, , where the principles governing suits for accounts and the authorities bearing on them have been discussed.

It is not open to any principal, who has got all the accounts of his agent in his possession, to employ the machinery of the Court for examining his accounts on the off-chance of making his agent liable for any sum which on such examination may be found due from him.

8. It has not been suggested anywhere in the present suit that defendant 4 was withholding any papers to render which there was a liability on his part, and in view of the defence of defendant 1 as contained in his written statement beyond which that defendant will not be permitted to travel, it is impossible to see how the plaintiffs can expect to fasten to defendant 4 with any liability so far as the two sums of money are concerned.

9. It has been also urged that the onus is on defendant 4 to show that the said amounts have not been received by him. This argument in my opinion is entirely untenable. As observed in the case Bharat Chandra Chakrabarty Vs. Kiran Chandra Rai, . it was for the plaintiffs at least to allege that defendant 4 had received the money or any part of it, and then the Court would have been called upon to decide the question upon such evidence as was brought before it whether a liability had been established and only in the event of the liability having been established a preliminary decree could have been passed directing an investigation by the commissioner to determine the extent of that liability. A decree of the present character passed in anticipation of determination of the liability and leaving to the commissioner the determination of the liability itself a function which legitimately appertains to the Court and not merely the extent of the liability, is one that the law never contemplates. I am clearly of opinion that the decree in so far as it is against defendant 4 is entirely unsupportable and the suit in so far as it was against him was wholly misconceived.

10. The appeal will consequently be allowed and the decree of the District Judge as against defendant 4 being reversed the suit in so far as it was against him will be dismissed with costs in all the Courts. Defendant 1 as respondent in this appeal has invited us to make an order in his favour under Order 41, Rule 4, Civil P.C. but I see no ground whatever to entertain this prayer. The decree which plaintiffs have obtained against defendant 1 will accordingly stand.

Rankin, C.J.

11. I agree.