(1931) 04 AHC CK 0021

In the Allahabad High Court

Sat Rohan Prasad Tewari APPELLANT

Vs

Bharath Prasad Man Tewari and Others RESPONDENT

Date of Decision : 15-04-1931

Acts Referred:

Citation : AIR 1931 All 652

Hon'ble Judges : Sulaiman, Acting C.J.

Bench : Division Bench

Judgement

Sulaiman, Ag. C.J.

1. This is a defendant''s appeal arising out of a suit for contribution. It has been referred by a learned Judge of this Court to a Bench of two Judges because of the question of law involved in it. The plaintiff had three brothers who formed a joint Hindu family. They were indebted to a firm Bilas Rai, which kept the account in the name of two brothers, Bharat and Lachhman. In 1913, a suit was brought against Bharat and Lachhman for the amount due from the joint family and on 4th June 1913 a decree for Rs. 450 with future interest at six per cent per annum was passed against defendants. This decree was against the family which was represented by its karta. Admittedly by that time the family was joint.

2. A separation took place several years afterwards. In 1924 Bharat, plaintiff, was arrested in execution of this decree and he executed a simple mortgage on 4th July 1924 in lieu of the amount due-under the simple money decree. Later on another suit was filed on the basis of this mortgage deed which also was decreed and Bharat executed a fresh mortgage-deed in lieu of this mortgage decree. Bharat then instituted a suit on 4th July 1927 for contribution against his three brothers.

3. The defendants pleaded that the claim was barred by limitation. The contention on their behalf was that the right to claim contribution arose on the date when the debt3 were incurred and that Article 107 was a bar to their claim. In support of this contention reliance was placed on the case of Aghore Nath

Moukopadhya v. Girish Chander Mukho padhya [1893] 20 Cal 18. Possibly in that case the debt was considered to be the personal debt of the manager, and it was supposed that he had expended that amount for the purposes of the family.

4. It seems to us that in the present case the debt was not the personal debt of the karta, but was the joint family debt for which the whole family was liable. Although the simple money decree in 1913 was passed against two elder members of the family only, it was a decree against the whole family and was capable of execution by attachment of the entire family property. Therefore it was a debt due from all the four brothers. While the family continued to be joint, there was no occasion for one of the four brothers to bring a suit for contribution. No cause of action accrued for it and time did not begin to run against Bharat.

5. It is only when separation took place that the rights and liabilities became separate and distinct. Bharat by executing a simple mortgage in 1924 discharged a joint debt by taking upon himself the responsibility of paying it. So far as the joint debt was concerned, it was wiped out on that occasion, and it may therefore be assumed in favour of Bharat that he discharged that debt by taking the responsibility upon himself alone in 192-1. The time therefore began to run against Bharat from. 4th July 1924 and the appropriate article which would apply to his claim ''would be Article 99, Lira. Act. The suit was brought just within three years of that date and was therefore in time. We must accordingly overrule the plea of limitation.

6. The second plea that has been put forward before us is that the suit is premature inasmuch as no actual payment has yet been made by Bharat. We have already pointed out that Bharat discharged the joint debt by taking upon himself the sole responsibility for paying it. This was tantamount to payment of the joint debt by him. We therefore overrule this plea also,

7. It appears that the plaintiff in his plaint claimed contribution, not on the basis of the amount due under the decree of 1913, but on the basis of the simple money decree which was obtained against him later on. It seems to us that the defendants cannot be liable for any enhanced rate of interest which Bharat alone might have agreed to pay subsequent to the partition. Their liability is to pay a proportionate share out of the joint debt together with the interest allowed by the decree that had accumulated up to 4th July 1924 when it was discharged. The amount due up to that date as stated in the decree , was Rs. 450 with simple interest at Re. 1-4-0 p. c. p. m. from the date of the decree. The plaintiff would be entitled to three-fourths of that amount with simple interest at the above rate on that amount from 4th July 1924 till the date of realisation.

8. The amount due on this basis would be a good deal more than that allowed by the Court below. As the respondent has acquiesced in the decree and has not filed any cross-objection inasmuch as his suit was based on the amount due under his mortgage deed, we do not think that the decree should in any way be varied.

9. The appeal is accordingly dismissed with costs.

