
(1924) 05 AHC CK 0050
In the Allahabad High Court

Sheo Ratan Singh, Minor through Musammat Sumitra	APPELLANT
Vs	
Karan Singh and Others	RESPONDENT

Date of Decision : 29-05-1924

Acts Referred:

Citation : 84 Ind. Cas. 269

Hon'ble Judges : Neave, J;Daniels, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This was a suit for contribution in respect of a decree for mesne profits and costs passed jointly against the parties in the year 1912. A pedigree is given in the judgment of the Court below. The parties are a son and grandsons of Daryao Singh, one of three brothers. The property in respect of which the decree for mesne profits was passed was that of a predeceased brother Puran Singh whose widow Musammat Sartaj Kuar held possession of it till 1912 when she died. The present parties claimed one-third share in the property on her death as collaterals and obtained possession and got an order for mutation, from the Revenue Court. The-representatives of the other two branches, filed a suit for possession and mesne profits and were successful. The plaintiff paid the entire decretal amount in 1918, Hence the present suit.

2. The property was originally held by Musammat Sartaj Kuar under a partition deed, of 7th January 1902. Under this deed the representatives of Daryao Singh's branch were given an equal share in the family property with the branches of Daryao Singh's brothers Girwar Singh and Narain Singh. Subsequently on the death of a collateral named Moti Singh litigation arose and Girwar Singh and Narain Singh denied the right of Daryao Singh's branch to any share on the ground that Daryao Singh was dead when the inheritance opened. The case went in appeal to the High Court where a compromise was arrived at By this compromise certain property was granted to Daryao Singh's sons but the deed of 7th January 1902 was declared to be cancelled. Musammat Sartaj Kuar

was no party to this litigation and the compromise, therefore, did not affect her share.

3. It has been generally recognised that the doctrine of *Merryweather v. Nixan* (1799) 8 T.R. 186 : 101 F.R. 1337 : 16 R.R. 810 : Sm. L.C. 9th Ed. Voll. II 569 : 12th Ed. Vol 1, 413, that no suit for contribution lies between tortfeasors does not apply in its full extent to India. A doubt has been expressed in some cases whether it applies at all, but the point has never been decided nor is it necessary to decide it in this case. *Nihal Singh v. The Collector of Bulandshahr* 33 Ind. Cas. 165 : 38 A. 237 : 14 A.L.J. 275 and *BhagwanDas v. Rajpal Singh* 63 Ind. Cas. 276 : 24 O.C. 148 are cases in point. There is a long course of authority both of this Court and of other Courts for the proposition that if it does apply it applies only where it must be presumed that the party in default knew that he was committing an unlawful act or the act is one of an obviously illegal character. This was laid down by the Madras High Court in *Shakul Kameed Alim Sahib v. Syed Ibrahim Sahib* 26 M. 373, by the Calcutta High Court in *Hari Saran Maitra v. Jotindra Mohan* 5 C.W.N. 393, and by this Court in *Kishna Ram v. Rukmini Sewak Singh* 9 A. 221 : A. W.N. (1887) 31 : 5 Ind. Dec. 581.: Even where the decree was one for damages for a directly tortious act, namely, the wrongful cutting of trees, a suit for contribution was allowed under this rule in *Suput Singh v. Imrit Tewari* 5 C 720 : 6 C.L.E. 62 : 2 Ind. Dec. (N.S.) 1065. We have, therefore, only to see whether there is anything in the circumstances, to deprive the plaintiff of his right to contribution. If the case has to be decided on grounds of justice, equity and good conscience it is obviously equitable, in the case of a decree for mesne profits -against parties who were in joint possession, that a person who had to satisfy the entire decree should be able to recover his share from his co-defendants, unless there has been something in his conduct to deprive him of his right. The rule of justice, equity and good conscience is in general, no doubt considered to be identical with the rule of English Law, but there are exceptions, and there is the high authority of Lord Herschell in *Palmer v. Wick* (1894) A.C. 318 : 6 R. 945 : 71 L.T. 163 for the view that the rule in *Merryweather v. Nixan* (1799) 8 T.R. 186 : 101 F.R. 1337 : 16 R.R. 810 : Sam. L.C. 9th Ed. Vol. II 569 : 12th Ed. Vol. I, 413 is not founded on any principle of justice, equity, or even public policy which would justify its extension to the jurisprudence of other countries. Lord Watson, concurring, of as were that to and in the p said merits rule not such commend it universal acceptation, Halsbury Lord Shand concurred these opinions. 4. The two facts relied on by the lower Court as destroying the plaintiff's cause of action are that after the partition deed of 1902 a judgment had been passed holding that the parties to this suit were not entitled to a third share in the property, and secondly, that the High Court compromise declared the partition deed of 1902 to "be cancelled. It is, however, important to notice that Musammat Sartaj Kuar's share under the partition deed was not affected by the compromise, and the parties might, therefore, very well be under the impression that the compromise held good in respect of it and that they were entitled to claim their share in it. It is even stated in the judgment of the lower

Appellate Court, on what evidence we do not know, that the mutation which the present parties obtained in respect of Musammat Sartaj Kuar's share was apparently given on the strength of the partition deed of 7th January 1902, that is on a ground of right and not on the ground of mere possession. If that is so the case in favour of the plaintiff is still further strengthened. The mere fact that a decree for mesne profits implies that the possession of the parties was unlawful is not sufficient in itself to do away with the right to contribution. In our opinion the suit should have been decreed and we accordingly allow the appeal, set aside the decrees of both the Courts below and decree the suit for the amount claimed in the plaint against the first two defendants only. The appellant will get his costs in all Courts against the first two defendants. The other defendants are the representatives of Girwar Singh and Narain Singh and are in no way liable to the plaintiff's claim. So far as the decrees of the Courts below award costs in favour of the defendants. Nos. 3 and 4, the decrees will stand good.