
(1972) 08 AHC CK 0023
In the Allahabad High Court
Case No : Second Appeal No. 2505 of 1963

Smt. Sia Dulari and Others	Vs	APPELLANT
Smt. Bhagwati and Others		RESPONDENT

Date of Decision : 22-08-1972

Acts Referred:

Contract Act, 1872 — Section 213

Citation : AIR 1973 All 260 : (1972) 42 AWR 772

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Advocate : V.K.S. Chaudhary, for the Appellant; R.S. Verma and Shashidhar Pathak, for the Respondent

Final Decision : Allowed

Judgement

Hari Swarup, J.—This is a defendant's appeal arising out of a suit for rendition of accounts and for recovery of the amount that may be found due. Plaintiff's case was that she had entrusted a sum of Rs. 2,000 to Babu Lal, husband of defendant No. 1 and father of defendants 2 to 7 in the year 1950. The money was paid on the basis of an agreement that Babu Lal will invest the amount on behalf of the plaintiff and will pay her the profits earned by such investment. According to the plaintiff Babu Lal continued to render accounts and pay the profits to her till 1952. Thereafter he neither rendered any account nor paid any money. Babu Lal died in 1960. The plaintiff filed the present suit in 1961. The plaintiff estimated the profits at Rs. 500/-and claimed a decree for the same amount or any additional amount that may be found due on accounting. The defence, inter alia, was that the defendants were not liable to render accounts as claimed by the plaintiff. The receipt of the money as well as earning of profits were denied. The trial Court decreed the plaintiff's suit accepting" the case as pleaded by her. The decree was in the following terms:--

"The plaintiff's suit is decreed with costs against defendants 1 to 7 for rendition of account and for profits which may be found after the account. The profits

more than Rupees 500/- shall, however, be recovered on payment of requisite court-fees....."

The lower appellate court dismissed the defendant's appeal agreeing with the findings of the trial court. The defendants have now come up in second appeal.

2. In the plaint the relief had been claimed for rendition of accounts, impliedly up to the date of the decree or the date of the suit. Mr. S. S. Verma, learned counsel for the appellant has however stated that the suit may be deemed as confined to the amount that may be found due till the date of death of Babu Lal, viz., April 9, 1960. He has stated so in view of the position of law that the heirs of an agent cannot be held liable for profits beyond the period of the death of the agent unless it was alleged and proved that they had undertaken to carry on the business and had in fact done so. In the plaint there is no such allegation.

3. The agency is created through a contract and the liability to render accounts is also a contractual liability. In the absence of any such contract being pleaded, the heirs cannot be made liable to render any accounts to the plaintiff. The decree of the courts below directing the defendants to render accounts is thus contrary to law. The circumstance that the heirs of the agent are not liable to render accounts does not, however, mean that the plaintiff cannot prove the liability of the defendants. The burden lies on the plaintiff to establish that a particular amount was advanced to the agent and that the agent had, on behalf of the principal, earned a particular amount of profits. It is also open to the defendants to render accounts and to show that the claim of the plaintiff is not correct. The rights of the parties in such a suit and the remedy available to them have been outlined in the case of Purshottam Vasudeo Vs. Ramkrishna Govind, . As held in that case, the legal representatives are liable for whatever may be found due to the principal on accounting. The suit can be for determination of the amount due from the deceased agent, but the burden of proving the amount due lies on the plaintiff and it is for the plaintiff to prove either by himself rendering accounts or by means of other evidence to establish the amount due. If he succeeds in proving his case he will be entitled to a decree for the amount found due and the same will be executable against the defendants to the extent of the assets of the agent in the hands of his heirs.

4. As the decree passed by the courts below is not in accordance with law, the appeal is allowed, the decree passed by the trial Court and confirmed by the first appellate Court is set aside, and the case is remanded to the trial Court for deciding the suit in accordance with law in the light of the observations made above. Costs will abide the result.