

(1949) 02 OHC CK 0003

In the Orissa High Court

Case No : A.F.A.D. No's. 82 to 84 and 90 to 92 of 1945

Sri Krishna Chandra Gajpati Narayan Deo

APPELLANT

Vs

K. Hanumantha Rao

RESPONDENT

Date of Decision : 21-02-1949

Acts Referred:

Contract Act, 1872 — Section 211 , 212
Limitation Act, 1908 — Article 90

Citation : AIR 1950 Ori 241

Hon'ble Judges : Narasimham, J; Jagannadhadas, J

Bench : Division Bench

Advocate : M.S. Rao and S.K. Ray, for the Appellant; P.V.B. Rao, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadhadas, J.—These six second appeals arise out of six suits in which a common judgment was delivered by the trial Court as well as the first appellate Court. The plaintiff-appellant in all these appeals is the Maharaja of Parlakimedi. These six suits along with two other suits arise in the following circumstances. The plaintiff-Maharaja in the course of administration of his estate and collection of rents, obtains decrees for arrears of rent as against defaulting tenants. One section of his office staff attends to the steps necessary to be taken for realisation of these decrees by execution in various Courts. Monies are drawn from time to time from the Estate Treasury for expenses in connection with these execution proceedings towards court-fees, batta memos, vakalats, etc., and entrusted to the clerk or clerks concerned for getting necessary steps taken in the Courts. In or about August 1938, the plaintiff's Dewan received an anonymous information that the money drawn in the years 1937-38 for the above-mentioned expenses were to a very large extent misappropriated. As a result of the inquiry and investigation following thereon, it was found that a number of employees in the office were involved in it directly or indirectly and consequently eight suits have been brought against them for recovery of the

amounts misappropriated, of which the present second appeals relate to six. It has been found by the appellate Court that the persons guilty of the actual misappropriation wholly or partly are (i) Venketasam Patnaik, (2) Sitharamamurti, and (3) Narasingha Rao. The suits have accordingly been decreed as against them and dismissed as against the others. We are in these second appeals concerned only with one K. Hanumantha Rao who is the sole respondent in all the appeals. He was the sheristadar of the Estate Huzar Office at the relevant period. The case of the plaintiff is that the misappropriations were the direct result of his gross negligence and he accordingly seeks to make him liable for the loss occasioned to him by his negligence. The system and method of working in vogue in the plaintiff's Estate Office relating to the execution of rent decrees have been fully described in paras. 8 and 9 of the trial Court judgment and it is unnecessary to repeat the same. The sheristadar is the ministerial head of the entire Huzar Office and is also the ex officio Treasury Officer. When monies are required for purposes of execution and decrees, the indent and the pay-slip after being prepared in the office and checked by the Head Clerk of the section go to the Sheristadar who sanctions them for payment. The concerned clerk draws the money thereupon and after utilising the money and filing the execution petition prepares the contingent bill with a certificate that the money has been utilised for the specified execution petitions. The contingent bill is checked by the Head Clerk and is sent to Sheristadar who approves of it by his initials and sends it on to the Dewan who forwards it to the Audit Branch and on their check and after their scrutiny the bill is passed for adjustment, as against the advance drawn under the original pay-slip. It may also be mentioned that the Sheristadar as the holder of power-of-attorney for the Maharaja signs the execution petitions. In this process it is clear that each item passes through the hands of the Sheristadar both before actual payment and after the alleged expenditure. The learned Subordinate Judge came to the conclusion that the Sheristadar was negligent in not exercising due supervision over the work of his subordinates in his branch and that the plaintiff's loss was occasioned thereby. He therefore held that the sheristadar was liable to make good the loss to the plaintiff. On appeal the learned District Judge on the contrary held that this lack of general supervision was not enough to saddle the sheristadar with the liability and that the lack of supervision cannot be said to be the real and effective cause of the misappropriation since the conscious act of the person who actually misappropriated intervened. He held that in order to saddle the defendant with the liability it was necessary for the plaintiff to establish that the action of the sheristadar amounted to misconduct, or to fraudulent and deceitful action, which was not proved in this case. Thus though the two Courts came to different conclusions on the question of the liability of the sheristadar, they agreed in dismissing the suits as against him on the ground that the suits were brought after three years from the date when the plaintiff became aware of the defendant's negligence and that accordingly they were barred by limitation.

2. The learned counsel for the appellant argues that the views of the Courts below both on the question of the substantive liability of the sheristadar and on the question of limitation are erroneous.

3. As regards the substantive liability of the sheristadar there is no clear evidence in the case as to what exactly are the defined duties of the sheristadar. One of the specific duties relevant to these cases of which evidence was sought to be given in the trial Court was that before the sheristadar signed the execution petitions for the plaintiff as his power-of-attorney holder, (which he was doing in all these cases) he was expected to satisfy himself that the petitions bear the court-fee stamps and thereby satisfy himself that the money already drawn by him for the same has been utilised. In support of this, two employees of the Estate P. Ws. 1 and 7 were examined, but their evidence has been rejected by both the Courts below and therefore it must be taken that it was not proved that this was one of the duties of the sheristadar. The only other evidence of the duties of the sheristadar is furnished by Ex.135/A dated 15th February 1923. It is the proceedings issued by the then Dewan stating that the duty of supervising the accounts branch and the suits branch of the Huzur Office is cast upon the sheristadar who will be solely responsible to the Dewan for the efficient working of the Huzur Office. It is not disputed that the work relating to the execution of decrees is part of the work of the suits branch. There is no evidence to show that this work has ceased to be part of the duties of the sheristadar since 1933 until the relevant period, namely, 1937-38. The sheristadar himself as D. W. 2 admits that it was the duty of the sheristadar to exercise general supervision of all the departments in the office, but he says he is responsible for the Treasury Department meaning thereby that his personal responsibility is confined to the Treasury Department, because he was the ex officio Treasury Officer. He says later in his evidence that as sheristadar, it was not part of his duty to supervise the work of the suits section including rent decree execution although it was under his general supervision and he says that no previous sheristadar used to supervise the work of the suits section including rent decree execution.

4. It is obvious that in view of proceedings (Ex. 135/A) dated 15th February 1923, and his own admission that the general supervision of the office was part of his duty he cannot absolve himself by the plea that his predecessors were not exercising supervision over the suits branch and that he was not also expected to do the same. The schedules to the plaints in these suits show that a substantial amount amounting to over Rs. 2000 has been misappropriated by the concerned clerks over a period of an year and odd. The decree amounts for which these executions were intended must be considerable. The contingent bills which passed through him to the Dewan bear the certificate of the concerned clerk that the amounts have been actually spent. It was therefore his clear duty to satisfy himself by some kind of check or inspection that there was no gross abuse. It would be a very difficult situation for a person in the position of the plaintiff, if one of his ministerial officers could escape responsibility by saying that his supervision was meant to be nothing more than a mere nominal formality. There

can be therefore no doubt that the sherietadar in this case was guilty of negligence. The question however still is, whether his negligence in the circumstances of this case, can be taken to be the direct cause of the loss occasioned to the plaintiff by the misappropriation of the clerks. In Halsbury Laws of England (Edn. 2, Vol. 23) para. 843, the position is summed up as follows:

"Although a plaintiff may be able to trace even a consequential connection between an injury he has suffered and the negligent act or omission of another the law does not necessarily attach liability to the person who has been negligent. Liability only attaches to negligence which is either the sole effective cause of the injury complained of, or is so connected with it as to be a cause materially contributing thereto. In other words, the plaintiff must prove both that the defendant was negligent and that his negligence caused or materially contributed to the accident. The injury must be capable of being traced as an effect to the negligent act or omission. The guiding principle is that a person is liable for all the consequences which in fact directly flow from his negligence."

5. In applying this principle, it is necessary to distinguish between the cases where the person negligent, stands in no relation to the person affected by the negligence and the case of the person standing in kind of fiduciary relation to each other as principal and agent in the way in which the present plaintiff and his sheristadar are related. Sections 211 and 212, Contract Act, relating to the duty of an agent to the principal has to be borne in mind in judging whether or not the loss occasioned by misappropriation cannot reasonably be said to be the direct consequences of the admitted lack of any supervision. In this connection the case in *A.C. Mukerji Vs. The Municipal Board*, is very instructive. The question in that case was about the responsibility of the Executive Officer of a Municipal Board for the defalcation of his subordinates. The Court came to the conclusion that the Secretary had no direct hand in the misappropriations, but was guilty of negligence. The learned Judges stated as follows:

"The cardinal point to our minds is his (Secretary's) responsibility for the entries in the daily cash book, It was certainly never intended that the signature of the Executive Officer appearing at the close of each day's entries in this cash book should be a mere formality. The Municipal Board relied upon these responsible officers exercising a real and effective supervision over the preparation of this most important register. This fact was emphasised in the rules and regulations laid down for the guidance of these officials . . . Where it can be shown that a loss sustained by the principal is directly traceable to disregard on the part of the agent of directions issued to him regarding the conduct of business, even though such disregard may have been due to nothing worse than negligence, or over-confidence in the honesty of others, such misconduct on the part of an agent is clearly actionable."

Later in the judgment with reference to the contention that if the Executive Officer had been diligent in the discharge of his duties, the defalcations

committed would either have been impossible or would have been immediately detected, or at any rate that the defalcation would have been detected after some reasonable time and that all defalcations thereafter must be taken to be the direct consequences of the negligence, the learned Judges, while rejecting the earlier portion of this argument pointed out that so far as the later portion of the argument was concerned, the difficulty was to fix any one definite date from which that argument could be given effect to, and they added as follows :

"We are gravely conscious of the responsibility which attaches to us in determining this issue, in view of the large number of Government officials, employees of railways, of corporations, of business concerns of all sorts, on whom it has been laid frequently, as a part only of multifarious duties to bear the responsibility of checking and certifying to the correctness of accounts, the actual maintenance of which is necessarily on the shoulders of lower paid subordinates. We can certainly commit ourselves to no conclusions which would reduce the responsibility of each superior Government servants or other officials to a mere farce. On the other hand we feel that a too stringent insistence upon their responsibility in the matter of observance of all rules and regulations laid down for their guidance might result in making it practically impossible for some of them to carry on the work laid upon their shoulders."

Having thus expressed themselves, the learned Judges in that case limited the responsibility of the Executive Officer to those items where the evidence affected him with personal notice of the arrival of a remittance, the embezzlement of which he failed to prevent, and where in their opinion, the embezzlement would have been prevented by the most ordinary and casual scrutiny of the entries in the accounts. If I may say so with respect, I entirely agree with the principles and standards laid down in this ruling.

6. The difficulty however in the way of the plaintiff in this case is that apart from the duty of general supervision, there is no specific code of rules regulating the duties of the sheristadar. We have also not been shown that in respect of any specific item, the misappropriation was reasonably likely to have come to the notice of the sheristadar if so irre kind of check or supervision was actually made and what if any such check or supervision should have been. In order to draw our attention to any specific item such as double payments or the like which might have been easily prevented by a casual check, we gave opportunity to the appellant's counsel after the conclusion of the hearing by re-posting the case to 30th November 1948 and 7th February 1949, but we have not been shown any instance where a casual check by the sheristadar would have led to the disclosure of any specific item of misappropriation. While therefore the defendant--sheristadar must be pronounced to be guilty of negligence and dereliction of duty, we are unable to differ from the view taken by the learned District Judge that the direct connection between the negligence and all or any of the items of misappropriation has not been established. It therefore follows that the plaintiff's suit must fail on the merits.

7. Coming next to the question of limitation, is not now disputed before as that the proper Article that is applicable in this case is Article 90, Limitation Act. Under that Article the starting point for limitation is the date when the neglect or misconduct becomes known to the plaintiff. In this case, as already stated the inquiry by the Dewan into the defalcation started on an anonymous information in or about August 1938. On that there was investigation and as a result of that investigation and inquiry (as appears from the proceedings of the Dewan dated 30th March 1939, marked as Ext. 41/A) a charge dated 5th December 1938 was framed as against this defendant and also individually as against the other employees. On receipt of the various explanations the Dewan drew up his proceedings and passed orders as against the various employees including the sheriatadar on 30th March 1939. It would appear, however, that the various employees were actually removed from service on 13th December 1933 that is almost immediately after the charges were framed. The contention for the plaintiff-appellant is that the cause of action for the suit arose on 13th December 1938, when the sheriatadar was removed from service. Both the Courts below have held that the plaintiff must be held to have knowledge of the acts constituting neglect on the part of the sheristadar at the latest by 5th December 1938, when a formal charge was given to him and that the dismissal does not furnish the starting point of the limitation. It is urged for the plaintiff-appellant that the charge at the most discloses only what may be called a "tentative" knowledge on the part of the plaintiff about the negligence of the defendant and that when he framed the charge against him and gave him an opportunity for explanation, it would not be reasonable to fix the plaintiff with final and definite knowledge of his negligence, because it may be that he may come to a different conclusion after seeing the explanation of the defendant. It is urged that to hold otherwise and to lay down that if a principal, coming to be apprised of the agent's misconduct framed a charge and gives him an opportunity for explanation and waits to finally make up his mind after considering the explanation, he would do so at the peril of limitation running against him for any civil remedy that he may ultimately have against his agent for such misconduct, would be to penalise a fair-minded investigation of the charge. While there is considerable force in this contention, there is no scope for any such view on the facts of this case. The charge (Ex. B) dated 5th December 1938 is as follows:

"The Clerk P.V. Venkatasam of this office who was entrusted with money from time to time for filing E. Ps., battas etc., in Chicacole Rent Court, misappropriated about Rs. 2,700 during the last two years.

"The sheristadar, Mr. K. Hanumantharao who has been issuing the amounts from time to time should explain why he did not exercise sufficient supervision over this clerk seeing that large amounts were being entrusted to him. He should also explain how he issued some amounts on bills prepared on loose sheets of papers and at times issued amounts for filing E. Ps., without even signing E. Ps., as an authorised agent.

He should also explain how he issued certain amounts without even signing in the bill book and at times issued the amounts on tin authority of the Court Clerk himself, without the attestation of the suits Head-Clerk or execution Clerk regarding the correctness of the amount claimed."

8. As already stated it is clear from the, proceedings of the Dewan (Ex. 41/A) that this charge was framed after investigation and inquiry and it is therefore reasonably clear in this case that the plaintiff or his Dewan had previous full knowledge of all the facts stated in the charge That it was not tentative is clear from the fact that the defendant was removed from the service on 13th December 1938, that is within a few days after the charge was framed against him and long before the final proceedings on the charge were passed on 30th March 1939. Therefore the plaintiff or his Dewan had sufficient knowledge of the facts prior to 13th December 1938, that is, at the latest on 6th December 1938, which made them to remove the defendant from service. They therefore cannot turn round and say that the knowledge which is clear from the wording of the charge relating to the facts constituting the misconduct of the defendant and which was the result of precedent investigation and inquiry was only tentative. In this connection it is useful to refer to the case in *Anamalai Chettiar v. N.M. Cawasjee A. I. R. 1938 Rang. 258 : 1938 Rang 457 F. B.* and *Janki Koer v. Mohabir Prasad A. I. R. 1914 Cal. 888 : 25 I. C. 706* which lay down the principle that the knowledge contemplated in Article 90 is knowledge of the acts constituting the neglect and not knowledge of the legal consequences of such facts. I have no doubt therefore on the facts of this case that the plaintiff must be imputed with the knowledge of the facts constituting the negligence of the defendant by 5th December 1938. The suits are all therefore also accordingly time-barred.

9. The dismissal of the suits consequently by the Courts below is correct and the second appeals must accordingly be dismissed with costs. The respondent will get the consolidated fee of Rs. 100 only in respect of the entire batch of second appeals.

Narasimham, J.

10. I agree.