

(1869) 03 CAL CK 0021

In the Calcutta High Court

Case No : Special Appeals Nos. 2393 and 2350 of 1868

Taramani Chowdhrair and Another

APPELLANT

Vs

Rajlakhi Debi

RESPONDENT

Date of Decision : 09-03-1869

Acts Referred:

Citation : (1869) 03 CAL CK 0021

Judgement

Hobhouse, J.—In these cases the important facts are as follows:--One Manikarnika obtained a decree for Rs. 812 odd, for arrears of rent, against Taramani Chowdhrair, the plaintiff, respondent in No. 2393, and certain other persons; one of whom is Rajlakhi Chowdhrair, the present special appellant before us. Taramani, however, held decrees against Manikarnika, the decrees being in her favour, not in her own right, but as guardian of her son, one Hara Chandra, a minor. In execution of those decrees, certain sums of money were placed in deposit by Manikarnika in Court to the credit of the said Taramani, as guardian of her minor son. Thereafter the said Manikarnika applied for execution of the decree for arrears of rent which she held against the present plaintiff, conjointly with the present defendants; and in execution of that decree, took away the money, which had been deposited by her to the credit of Taramani, as guardian of her minor son, Hara Chandra. Then followed the present suit. It was instituted on the part of Taramani to recover the sum of Rs. 783 odd, or thereabouts, as for contribution made in payment of the decree held by Manikarnika against her and her co-sharers jointly.

2. In her plaint the plaintiff sets forth, more or less distinctly, the facts which I have above mentioned, and adds that she had repaid to her minor son, Hara Chandra, the sum of money which Manikarnika had taken from Hara Chandra, in execution of the decree against her (plaintiff) and her co-sharers; and on these facts, she sued to recover the contribution in question.

3. The first issue between the parties was as to whether the plaintiff was competent to bring this action at all.

4. The Courts below have held that she was so competent, and have given the plaintiff a decree.

5. There are two appeals before us against the decision of the Court below, viz., this present appeal and appeal No. 2350; and it is admitted that, if we should be against the plaintiff, special respondent, in the case 2393, the appeal of the plaintiff in the other case must be dismissed. The only question then that we have to determine in this case is, whether the plaintiff was in law competent to sue for the contribution in question.

6. The lower Appellate Court has held that she was competent on these grounds:--The Judge says:-- "It is manifest that the money taken for payment to Manikarnika was in Taramani's name and at her disposal. It may be called trust-money in her hands, but the money was clearly taken from her, and not from Hara Chandra. The latter had his remedy, if any of his money had not been properly accounted for, by suing Taramani for the same; but this money being in the hands of Taramani under a trust, cannot excuse the joint-debtors from being answerable to Taramani for contribution. They have not been exempted from their liability, and Hara Chandra has no power to sue them. Besides, I do not think the Court is permitted to look beyond the fact that the money was taken from Taramani. How or by what means, or for what purpose or on whose account, Taramani held that money, are points that need not be considered in the present case."

7. The objection taken by the special appellant is this:--He says that the decree of Manikarnika was against Taramani herself and her co-sharers, and not against Hara Chandra at all or his estate; that the money which stood in deposit in Taramani's name, was not so in deposit on her own account, but on account of her son Hara Chandra; that, therefore, Manikarnika had no authority, in execution of her decree against Taramani and her co-sharers, to take money, which was, in fact, the property of Hara Chandra; that this being so, Taramani was under no legal necessity to recoup Hara Chandra; and that, therefore even if she did recoup him, the payment thus made, in satisfaction of a joint decree against herself and her co-sharers, was a voluntary payment, and was not, therefore, such a payment as entitled her to sue for contribution.

8. We think this contention, on the very face of it, is a good one. No doubt it was, as the Court below has said that the money stood in Taramani's name and so was in one sense at her disposal; but it cannot be said that it was at her disposal to meet her own debts, because the money was not at her own credit for herself only, but at her credit as guardian of her son. When therefore, the money was taken away from her, it was only nominally taken away from her; and in reality it was taken away from Hara Chandra. Neither was there any necessity for her to recoup Hara Chandra, against whom there was no decree. It was thus clearly nothing more than a voluntary payment on her part, and so was not a payment which entitled her to sue for contribution against her co-sharers.

9. In this view of the case we think that the plaintiffs' suit must be dismissed, and the judgments and decrees of both the lower Courts be reversed with costs in all Courts in favour of the special appellant Rajlakhi Chowdhrair. We would add that the judgment of the Privy Council, *Fatima Khatun v. Mohammed Jan Chowdry* [1 B.L.R. (P.C.), 21], is not in our opinion in point; and as regards special appeal No. 2350, we think that it must be dismissed with costs.