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Court : Allahabad

Decided On : Oct-02-1933

Reported in : AIR1934All76

Appellant : Bal Krishna and ors.

Respondent : Deb Sing

Judgement :

Mukerji, J.

1. This is an appeal which arises out of a suit brought by the respondent against five persons two of whom are ladies in the following alleged circumstances : Gauri Dutt and his brother, Parmanand, were partners and dealt in timber. On the death of Parmanand, his sons, defendants 1 to 3, went into the business with Gauri Dutt, and in the course of their business they borrowed money from the plaintiff from time to time. On 23rd August 1927, a promissory note was executed by Jai Krishna, defendant 2, and it was subsequently signed by Gauri Dutt. On 27th November 1927, an acknowledgment was given by one of the defendants, and on 4th June 1928 another acknowledgment was given by another defendant. Gauri Dutt died and his two widows, defendants 4 and 5, are his heirs. The plaintiff is entitled to recover the money due on the several documents mentioned above, and he claims Rupees 7,992 by the suit.

2. Defendants 1 to 3 alone contested the suit. Defendant 2, Jai Krishna, filed a compromise to which the plaintiff was a party, but the compromise was never recorded by the Court below, because the other defendants did not agree to the terms arrived at. In the Court below it was found that the two acknowledgments produced by the plaintiff were lost from the record, but the Court did not come to any clear conclusion as to who was responsible for the loss. Issues were struck, but Important issues were omitted. Ultimately the Court came to the conclusion that the plaintiff's case was substantially correct and it should be decreed. It, however, confined its decree to the amount of Rs. 6,000, because that was the amount which the plaintiff had agreed to take when the compromise was filed. The defendants have appealed and the plaintiff has filed a cross-objection. The plaintiff urges that the compromise having fallen through, the whole claim should have been decreed, as the whole claim has been found to be correct.

3. For the appellants several points have been taken, but when they are considered they come practically to two points first of all there was no liability established as against defendants 1 to 3, and the suit could not be based on mere acknowledgments. On the merits it appears on the evidence that the business was carried on by the two brothers, Gauri Dutt and Parmanand, and that on the death of Parmanind, Parmanand's eldest son, defendant 1, carried it on behalf of himself and his joint brothers, defendant 2 and 3. The plaintiff's evidence on this point is very clear and we accept it. There are also other evidence and circumstances to substantiate this case. For example, when the promissory note of 23rd August 1927 was executed, the older note that existed was one given by Gauri Dutt and Bal Krishna alone, yet we find that Jai Krishna admitted his liability. Then again we find that the compromise was being filed for the large sum of Rupees 6,000. We hold with the Court below that the money, which was borrowed by Gauri Dutt and Bal Krishna and in respect of which the promissory note of 23rd August 1927 was executed, was required for timber business of defendants 1 to 3 and Gauri Dutt. The claim therefore, so far as this promissory note of 23rd August 1927 is concerned, is good and the decree of the Court below must be upheld.

4. As regards the contention that the suit could not be maintained on mere acknowledgments of 11th November 1927 and 4th June 1928, it seems to be a

good one. Two Privy Council cases and two decisions of this Court have been cited before us. The Privy Council cases are : Kalka Singh v. Paras Ram (1895) 22 Cal. 434 and Maniram Seth v. Seth Rupchand (1906) 33 Cal. 1047. None of these cases touches the point before us, namely, whether a suit can be maintained on a mere acknowledgment. As regards this Court, in the two cases, namely Ganga Prasad v. Ram Dayal (1901) 23 All. 502 and Gobind Das v. Sarju Das (1908) 30 All. 268, it was definitely held that a mere acknowledgment of a liability could not be made the basis of a suit. On behalf of the respondent reliance has been placed on two cases. One is Gobind Singh v. Bijay Bahadur Singh : AIR1929 All980 . The case was decided by Sulaiman and Niamatullah, JJ. The respondent does get some support for his contention from the decision of Niamatullah, J. But the judgment of Sulaiman, J., does not go so far as the judgment of Niamatullah, J., goes. It appears that Niamatullah, J., was of opinion that a document which amounts to nothing but a clear acknowledgment of a previous debt, may be made the basis of a suit on the ground that an acknowledgment of a debt implies a promise to pay. With all respect we are not able to accept this view. An acknowledgment of a debt does not amount to a supersession of the debt acknowledged. It only confirms the older debt, and therefore if anything has to be recovered, it is on the debt which is being acknowledged by the document called acknowledgment. It would be a contradiction in terms to say that a document, which amounts only to an acknowledgment, supersedes the old debt and gives rise to a new one. There is another decision by the same learned Judges and almost the same remarks apply to that case. It is Abdul Rafiq v. Bhajan : AIR1932 All199 . Sulaiman, C.J., held that a suit could be maintained on what is called an acknowledgment only if it amounted to a new contract including a fresh promise to pay : see his observations at p. 87 (of 1932 A.L.J.). We are of opinion that a mere acknowledgment of an older debt cannot be made the basis of the suit. There have been no such decisions dissenting from the older decisions which would require us to refer the point to a larger Bench.

5. The learned Judge in the Court below found that the plaintiff's case was a correct one. In this view, we think it necessary to give the plaintiff an opportunity to amend his plaint and base his claim on the promissory notes on the

acknowledgments of which he based his claim. We may note here that we have been-asked for this relief, and we are inclined to grant it. The judgment of the learned Judge of the Court below shows that the Judge has not proceeded to try the case in the right manner. For his benefit we would indicate the points that are likely to arise after the amendment of the plaint and assuming that the defendants again contest the whole claim. (The rest of the judgment is not material to the report).

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