SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Ram Charan Vs. Bulaqi

Ram Charan Vs. Bulaqi

SooperKanoon Citation : sooperkanoon.com/477247

Court : Allahabad

Decided On : May-29-1924

Reported in : (1924)ILR46All858; 83Ind.Cas.880

Judge : Daniels and ;Neave, JJ.

Appellant : Ram Charan

Respondent : Bulaqi

Judgement :

Daniels and Neave, JJ.

1. The point for decision in this appeal is whether a decree can be passed in favour of the defendant on a suit for the taking of partnership accounts under Order XX, Rule 15, of the Code of Civil Procedure, if it turns out on taking the account that there is a balance due to the defendant instead of to the plaintiff. Both the courts below have found that, instead of there being any sum due to the plaintiff on taking accounts, there is really a very considerable sum due to the defendant. On this finding the trial court dismissed the suit with costs. The plaintiff appealed and the defendant filed cross-objections. The learned Additional Judge dismissed the plaintiff's appeal and gave effect to the cross-objection of the defendant by passing a decree in favour of the defendant for a sum of Rs. 1,230-3-0. The appellant contends that the only case in which a decree can be passed in favour of the defendant is when a set-off is claimed by Order XX, Rule 19. The

view of the court below is supported by the form of decree prescribed in the Code of Civil Procedure for a suit of this nature. The form is given as No. 22 in Appendix D to the Code. It provides for either a decree in favour of the plaintiff against the defendant or in favour of the defendant against the plaintiff. There is a direct authority on the question, that in a suit for an account a decree can, if necessary, be given in favour of the defendant on payment of the necessary court fees, in the case of Parmanand v. Jagat Narain (1910) I.L.R. 32 All. 525. This was a suit between principal and agent but the same principle is applicable to a suit between partners whose partnership has been dissolved. In the case which was cited on the other side, Misri Lal v. Banarsi Das (1906) A.L.J. 233, the decision depended on the wording of Section 215 of the Code of 1882 which did not apply to a suit for the taking of partnership accounts. On principle the appellant's contention would lead to very undesirable results. If the account is gone into by the court, it is for the purpose of finally settling up matters which were left outstanding between the parties. It would be most undesirable that if on an account being taken, it turned out that there was a balance due to the defendant, it should be necessary for him to file another suit in which the whole matter would have to be gone into again. We, therefore, reject the appellant's contention on this point.

2. The only other question is one of a clerical error which appears to have taken place in the statement of account at the conclusion of the learned Additional Judge's judgment. In the body of his judgment he accepted the report of the commissioner appointed to inquire into the accounts, so far as that report was accepted by the trial court. The trial court found that the total loss was Rs. 1,039 and not Rs. 1,831 as originally found by the commissioner. Half this loss was debitable to the plaintiff. After allowing for this mistake, the amount due to the defendant is, omitting the odd annas, Rs. 834 instead of Rs. 1,230. We modify the decree of the court below to this extent. In other respects, the appeal is dismissed. The parties will receive and pay costs in proportion to success and failure.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com