

Bal Kishan Vs. Chhidda and ors.

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SooperKanoon Citation : sooperkanoon.com/478333

Court : Allahabad

Decided On : Jun-14-1929

Reported in : AIR1929All654; 122Ind.Cas.661

Appellant : Bal Kishan

Respondent : Chhidda and ors.

Judgement :

Dalal, J.

1. There was a certain suit in which there were eleven defendants and a decree for costs was passed in favour of the plaintiff Baburam of that suit. The decree for costs was recovered entirely from the plaintiff of the present suit Bal Kishan, so he sued the other defendants of the former suit for rateable contribution. The amount recovered from him alone was Rs. 115-4-0 and he desires interest Rs. 37-0-0 thereon. The total would be Rs. 152 and odd. It appears that only four persons Bal Kishan, his wife Mt. Neta, Kundan and Mt. Janki, defended the suit and only three of them, excepting Mt. Janki, appealed and their appeal was dismissed. The learned Judge of the lower appellate Court has made some elaborate observations as to the respective liability of the defendants. He has missed the point completely. In the present suit a defendant has not come to recover rateable contribution of the expenses incurred by him and money expended in defence of a suit brought jointly against him and others. He is suing to recover the amount of a

decree which was passed jointly against himself and others. All the observations of the learned Judge therefore and the rulings on which he has relied are beside the point. Both the cases quoted by him, Ramsarup v. Baij Nath A.I.R. 1921 All. 372 and Parsotam Das v. Lachmi Narain A.I.R. 1923 All. 67, were brought by some of the plaintiffs to a suit against the other plaintiffs and have no application to the present suit. Observations made therein as to the liability of defendants inter se were merely obiter. The question as to the liability of defendants between themselves was examined with great care by a learned Judge of this Court in Babu Ram v. Badri Das [1926] 24 A.L.J. 720. All the relevant rulings have been collected therein. I accept the observation of the learned Judge in that case:

The true rule is that prima facie a right of contribution exists between persons against whom a joint decree for costs has been passed and that it is for a defendant seeking to avoid liability to show some equity which entitles him to exemption.

2. The question for decision here therefore is which of the defendant respondents have shown any reason of equity for exemption. In my opinion these who did not defend the suit and took no interest therein are equitably entitled to exemption. The sum of Rs. 152 should be divided between Bal Kishan, his wife Mt. Neta, Kundan and Mt. Janki. Mt. Janki is the only defendant-respondent represented here besides the others whom I have declared to be entitled to exemption on equitable grounds. On her behalf it was argued that as she did not take part in filing the appeal she was not liable to pay Babu Ram's costs of appeal. Such costs cannot be separately determined and at all events it could be nothing more than pleader's fee as Babu Ram was respondent and not an appellant in the appeal. I think that every one of the four persons must pay Rs. 38.

3. In the result, I set aside the decree of the two subordinate Courts and decree the suit separately for Rs. 38 against every one of the three defendants Mt. Neta, Mt. Janki and Kundan with proportionate costs of all the Courts. The suit against the rest of the defendants is dismissed. The defendants other than Mt Janki who were represented here shall receive from the plaintiff costs of this appeal only.

