

Binda Pershad Vs. Ramchander and ors.

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Court : Allahabad

Decided On : Feb-01-1921

Reported in : 60Ind.Cas.821

Judge : Tudball and; Rafique, JJ.

Appellant : Binda Pershad

Respondent : Ramchander and ors.

Judgement :

1. This is a plaintiff's appeal arising out of a suit for damages. The plaintiff's case was that he and one Abdul Haq became partners in a brick kiln business in August 1913; that a deed of partnership was drawn up on the 16th of October 1913; that the plaintiff supplied Rs. 2,000 and Abdul Haq Rs. 300 worth of capital, and that the plaintiff not having the necessary technical knowledge, Abdul Haq ran the business, but the plaintiff discovering that Abdul Haq was heavily involved in debt decided to separate from him and on the 26th of March 1914 a deed of dissolution of partnership was drawn up under which the plaintiff paid to Abdul Haq Rs. 300 his share of the capital and Rs. 950 his share of some of the produce of the kiln, Apparently, this sum of Rs. 1,250 was distributed to certain creditors of Abdul Haq. Among the creditors were the respondents to the present appeal. Abdul Haq applied to the District Judge to be declared an insolvent and a Receiver was appointed to take possession of his property. According to the plaintiff, on the 20th of September 1914 the respondents applied to the District Judge stating that Abdul

Haq owned a half share in the brick kiln and asking the Court to direct the Receiver to take possession of the kiln. The District Judge ordered the Receiver to comply, and the Receiver took complete possession of the kiln on the 26th of September 1914. The plaintiff filed objections which were allowed and on the 21st of January 1915 the Receiver gave up possession of the kiln. On the 30th January 1915, however, the respondents, according to the plaintiff himself, made a further application for review of the order of the 21st of January 1915, and alleged that the whole of the kiln belonged to Abdul Haq and asked the Court to direct the Receiver to take possession thereof. The District Judge apparently passed an ex parte order to the Receiver to comply and on the 10th of February 1915, the Receiver again took possession of the whole of the kiln. Air appeal was preferred to the High Court by the plaintiff against the order of the, District Judge and this Court on appeal set it aside and possession of the kiln was restored to the plaintiff on the 6th of May 1915. On these allegations of fact, the plaintiff sued the defendants for damages caused to him by the seizure of the brick kiln by reason of which he alleged that he had suffered considerable loss. The defendants put in a long written statement denying many facts alleged by the plaintiff but asserted, among other things, that the dissolution of partnership of 26th of March 1914 was a bogus transaction, made by Abdul Haq and Binda Prasad in collusion, with a view to defeat the creditors of the former. It was also argued in Court that, assuming the facts to be as stated by the plaintiff, the defendants were not legally liable for any damages that had accrued to the plaintiff and that the proper person to sue was the Receiver who was responsible there for. Both the Courts below have decided only two points. They have held that the dissolution of partnership of the 25th of March 1914 was a genuine and not a bogus transaction. They have then held that, on the facts alleged, the respondents were not legally liable for any damages, and that the suit ought to have been filed against the Receiver. In this view, the Courts below have dismissed the suit without going into the other facts or the question of actual damages. It is urged on appeal that the decision of the Court below on the point of law which is raised is erroneous and should be set aside. In view of the decision of this Court in *Abdur Rahim v. Sital Prasad* 54 Ind. Cas. 729 : 41 A. 658 : 17 A.L.J. 856 : U.P.L.R. (A.) 115 it is clear that the decision of the Court below on the question of law is incorrect. The case mentioned above is-

parallel and exactly fits the facts of the present case. It is unnecessary for us to go any further into this point as the matter is covered by a decision of a Divisional Bench of this Court. The case must, therefore, go back for decision on its merits. There are several questions of fact into which the Court will have to go. We, therefore, allow the appeal, set aside the decree of the Court below and remand the case to the Court of first instance through the lower Appellate Court with directions to re-admit the suit on its original number and to proceed to hear and decide it according to law. The costs of this appeal and those of the Courts below will be costs in the cause and will abide the result. The costs in this Court will include fees on the higher scale.

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