

Arjun Singh Vs. Parbati

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Court : Allahabad

Decided On : May-19-1922

Reported in : AIR1922All465; 69Ind.Cas.173

Judge : Stuart and ;Kanhaiya Lal, JJ.

Appellant : Arjun Singh

Respondent : Parbati

Judgement :

1. The facts of the suit out of which this appeal arises are these. Ganga Prasad Tiwari died in Mainpari in 1911. He left a widow Musammat Parbati, Arjun Singh claimed to be his adopted son. Musammat Parbati set up that Arjun Singh was not the adopted son of Ganga Prasad. On the 8th October 1911 Musammat Parbati and Arjun Singh executed an agreement in writing by which they undertook to refer their disputes to the arbitration of a certain Dambar Lal. Dambar Lal accepted the arbitration and made an award on the 8th November 1911 by which he awarded a moiety of the debts due to the deceased to Arjun Singh and the remaining moiety to Musammat Parbati. He awarded Musammat Parbati a life interest in other property. Arjun Singh instituted a suit on the 6th May 1912 against Musammat Parbati for a declaration that the award in question was of no effect as against him and that he was the adopted son of Ganga Prasad and the owner of the entire property left by the latter.

2. The learned Subordinate Judge of Mainpuri decreed the suit in his favour by a judgment of the 31st March 1913 and Musammat Parbati appealed to the High Court who on the 16th November 1915 found that the award was a good and binding award and dismissed Arjun Singh's suit. The present suit has been brought by Musammat Parbati against Arjun Singh for damages sustained by her in consequence of his suit. The lower Appellate Court has decreed her relief to a certain extent. It has allowed her compensation in respect of the bonds which became time barred between the 31st March 1913 and the 16th February 1915, the period during which she was precluded from suing on the bonds owing to the existence against her of the judgment of the Subordinate Judge which was eventually set aside. Arjun Singh appeals to this Court on a prayer that the whole suit of Musammat Parbati should stand dismissed. Musammat Parbati files cross-objections requesting that she should be granted relief more than was allowed her by the lower Appellate Court.

3. The first plea taken by Arjun Singh is that no such suit as that brought by Musammat Parbati can lie. In support of this plea his learned Counsel relies in the main on a decision of a Bench of the Calcutta High Court Singh 26 Ind. Cas. 296 : 42 C. 550 : 18 C.W.N. 1189 : 21 C.L.J. 68. The facts in that case were that Mohini Misser had sued Surendra Narain Singh for an injunction restraining the latter from erecting an Indigo Factory on certain land. A temporary injunction was given to the plaintiff and finally a mandatory injunction was given to him by the Trial Court, That mandatory injunction was set aside by the District Judge but restored by the High Court of Calcutta. Their Lordships of the Privy Council subsequently decided on appeal that the plaintiff was entitled to no relief and dismissed the suit. The defendant then sued the plaintiff for damages in respect of the loss that he had undergone owing to his inability to carry on the indigo business during the period that he was restrained under the orders of the Trial Court and the High Court. The Bench decided that no such suit for damages could lie. We regret we are unable to accept the view of the *la v* taken by the learned Judges in deciding that case. Great stress was laid by them upon the observations of Bowen, L. J., in *Quarte Hill Gold Mining C v. Eyre*(1883) 11 Q.B.D. 674 : 52 L.J.Q.B. 488 : 49 L.T. 249 : 31 W.R. 668. We have looked to the decision of the Court of Appeal in that case for authority, but we do not interpret the authority of that case as it has been

interpreted in the Calcutta case to which we have referred. We find it, on the contrary, to support the conclusion that such a suit as this does lie. It was laid down therein that the mere failure of a litigant to establish his claim to a relief in a civil suit does not necessarily--in fact does not usually--give the successful party a cause of action for damages simply by reason of his success. Even if an action has been brought falsely and maliciously and without reasonable or probable cause, it does not follow that the bringing of the action will furnish a cause of action in a subsequent suit to the person who has been sued. The first step is to prove special damage, and in the absence of the proof of special damage no action for damages will ordinarily lie. The reasons are shortly that the bringing of an ordinary action does not as a natural or necessary consequence involve any injury to a man's property, and, further, that the only costs which the law recognizes and for which it will compensate him, are the costs properly incurred in the action itself, For this the successful defendant has already been compensated. Therefore as stated by Bower, L.J., the bringing of such an action even maliciously and without reasonable or probable cause will not ordinarily support a subsequent action for malicious prosecution. But the case is different where the bringing of an action does as a necessary consequence involve an injury to property which cannot be compensated by the grant of costs in the action and in that very case, Quartz Hill Gold Mining Co.v.Eyre 26 Ind. Cas. 296 : 42 C. 550 : 18 C.W.N. 1189 : 21 C.L.J. 68, it was held that an action did lie for falsely, maliciously and without reasonable or probable cause presenting a petition to wind up a trading company.

4. What are the facts here? Arjun Singh, after agreeing to have the dispute as to the property with Musammat Parbati decided by the award of a competent arbitrator, resiled after the award had been made, and instituted a suit against Musammat Parbati in consequence of which she was deprived for a certain period of her right to enforce the payment of certain debts due to her deceased husband with the result that their payment in certain instances became impossible owing to the action of the, Law of Limitation. Here in a special damage following as a direct consequence of the action of Arjun Singh, could Musammat Parbati have recovered compensation for this damage by the awarding to her of costs in the previous proceeding? We are satisfied that she could have obtained no compensation in this manner. Could she have obtained that compensation under the

provisions of Section 144 of the Civil Procedure Code? We are of opinion that she could not have obtained compensation under that' section, for the payment of damages in respect of the injury which she had : Buffered was not properly consequential on the reversal of the Subordinate Judge's decree by the High Court. It has to be noted that the Subordinate Judge's decree was merely for a declaration that a certain award was bad in law and that Arjun Singh was the adopted son off Ganga Prasad. The High Court directed that the nit should be dismissed on the ground that the award was a good award and that the question as to whether Arjun Singh was or was not the adopted. son of Ganga Prasad did not require to be decided. As a result of the dismissal of the suit on appeal and the reversal of the decree, the question of the payment of damages to Parbati owing to her incapacity to bring suits from 31st March 1913 to 16th February 1915 certainly did not arise. So the provisions of Section 144 (1) have no application. Section 144 (2) reads as follows:

No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under Sub-section (i).

5. We understand this sub-section to mean that where restitution cannot be obtained by application under Sub-section (1) as is the case here, there is no bar to the institution of a suit. We thus find that the relief which has been awarded to Parbati by the lower Appellate Court could be legally awarded to her in a suit of the nature which she brought, and we find that on the merits she was entitled to that relief. This concludes the appeal.

6. With regard to the cross objections we are of opinion that (be lower Appellate Court has rightly decided the matter and that it has given Musammat Parbati all the relief to which she is entitled and that it is not possible to grant her any more. For the above reason, we dismiss the appeal and the cross-objections. The appellant will pay his costs of the appeal and those of the respondent. The respondent will pay her own costs to the cross-objections and those of the appellant.