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SooperKanoon Citation : sooperkanoon.com/790880

Court : Chennai

Decided On : Dec-13-1901

Reported in : (1902)ILR25Mad599

Judge : Benson and ;Bhashyam Ayyangar, JJ.

Appellant : Siva Panda

Respondent : Jujusti Panda

Judgement :

1. In Original Suit No. 156 of 1899 a decree was passed jointly against the plaintiff and the defendant in the present suit directing them to deliver to the plaintiff in the former suit certain lands and to pay Rs. 43-15-10 on account of the profits of such land and Rs. 31-3-6 for costs of the suit. The defendant in the present suit did not appear and defend the former suit. In execution of the said decree the whole amount decreed with costs was recovered from the present plaintiff alone and he now sues the defendant for contribution, and claims payment of Rs. 41-3-2 being one-half of the amount realized from him. The defendant resists the claim on the following grounds : (1) That the decree in Original Suit No. 156 of 1899 was passed against him ex parte; (2) that he had no concern in that suit and that he appeared and stated so before certain Commissioners appointed in that suit under the Indian Oaths Act to administer a special form of oath to be taken by the plaintiff therein, by which oath the present plaintiff the second defendant therein agreed, to be bound; (3) that the present plaintiff put forward a false contention in that suit;

(4) that the decree was passed against both the defendants therein in accordance with the oath taken by the plaintiff therein; and (5) that the mesne profits decreed related to faslis 1306, 1307, 1308, and were received and enjoyed by plaintiff alone.

2. Upon these pleadings and with reference to the pleadings and judgment in the former suit, the District Munsif held that the defendant was not bound to contribute and dismissed the suit. His decision seems to be based on the first, second and fourth pleas raised by the defendant as above set forth. The above decision of the District Munsif was set aside in revision by Davies, J., and a decree was passed in favour of the plaintiff as prayed for, on the ground that the District Munsif was wrong in going behind the decree which made the defendant jointly liable with the plaintiff, and that being so, the plaintiff was entitled to claim contribution from the defendant for the moiety.

3. In our opinion the plaintiff has made out a prima facie case by the production of the judgment in the former suit and of the certificate of satisfaction thereof by him alone. It is immaterial that, so far as the present defendant is concerned, it was passed against him ex parte, and it was not competent to the District Munsif to go behind the decree in that case and hold that the foundation of the present action fails because the former suit was decided by the special oath of the plaintiff therein and the pleadings in that suit show that the present defendant, who did not appear and defend that suit, had no interest in that case. Whether the judgment in that case was in fact and law right or wrong, it has become final and it is not now open to the defendant to contend that that suit ought to have been dismissed as against him and no decree ought to have been passed holding him jointly liable with the plaintiff. In a suit for contribution by one joint judgment-debtor against another, the decree passed against them jointly in the former suit is conclusive, not only as between them on the one hand and the decree-holder on the other (who is no party to the contribution suit), but also as between the judgment-debtors inter se. It is not conclusive on the question of the liability to contribute or the extent of such liability, but it is conclusive in the sense that it is not open to either party to contend that the former suit ought to have been entirely dismissed or that at any rate he ought not to have been held liable to the decree-holder therein or that the amount

decreed was excessive or fixed on principles erroneous on the very face of the judgment. Without impugning the propriety of the judgment, it will, of course, be open to the party from whom contribution is sought, to plead and establish that as between the joint-debtors the plaintiff is solely liable to the debt or that he is not equally liable with the plaintiff or that both being joint tort-feasors in a sense in which, on public grounds, the right of contribution is negatived, the suit is not maintainable.

4. The fifth plea raised in this case might, if established, have been a valid defence to this suit. Though, in the former suit, both may have been rightly held jointly liable to the then plaintiff, yet, if as between the plaintiff and defendant herein, the former alone received or enjoyed the profits for faslis 1306, 1307, 1308,' which were decreed in the former suit, the defendant cannot be called upon to contribute.

5. No plea having been raised against the maintainability of the suit on the ground that the plaintiff and the defendant were joint tort-feasors it is unnecessary to consider how far the rule in the English case of *Merryweather v. Nixon* 8 T.R. 186 which Lord Herschell in *Palmer v. W. and P. Steam Shipping Co.* L.R. 1894 A.C. 318 felt bound to say did not appear to him 'to be founded on any principle of justice or equity or even of public policy, which justifies its extension to the jurisprudence of other countries' should be followed in India or to consider the extent to which it has been limited in England by the subsequent cases of *Adamson v. Jarvis* 4 Bing. 66 *Palmer v. W. and P. Steam Shipping Co.* 1894 A.C. 318 and *Burrows v. Rhodes and Jameson* 99 (1) Q.B. 816.

6. As regards the fifth plea, which, if established might, as already observed, be a valid defence to the suit, it is not alleged that any evidence was tendered or rejected.

7. The appeal therefore fails and is dismissed with costs.