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Court : Kolkata

Decided On : Mar-30-1922

Reported in : AIR1924Cal511,71Ind.Cas.324

Judge : John Woodroffe adn; B.B. Ghose, JJ.

Appellant : Chandra Kumar Basu

Respondent : Rani Sashimukhi Debi and ors.

Judgement :

1. This is a suit brought by the plaintiffs-respondents for account against defendant No. 1, who was their cashier and defendant No. 2 with whom in the present appeal we are not concerned and defendant No. 3, the appellant before us who was the Saiar Naib. It is alleged that money is due by defendant No. 1 on account being taken against him and that the appellant, the Sadar Naib is responsible for any loss which the plaintiffs may have sustained through action or omission of their cashier, which loss has been occasioned by his negligence, his duties being, amongst others, to supervise the work and to sign the jamakharach of the Sadar Khazanchi. An objection has been taken in this appeal to this suit on the ground that it is bad for misjoinder of causes of action and parties. I think this objection is a sound one.

2. It is a suit for accounts as against defendant No. 1 and a suit for negligence against the appellant who becomes liable to re-pay to the plaintiffs such sum of

money as may have been lost by failure of the first defendant to carry out his duty. There having been such a mis-joinder, the suit has been left, as maybe expected, in a very anomalous position. For, so far as I can read the judgment, there is no distinct finding that the appellant is liable for such a sum of money as may be found payable on the account which has been directed by the judgment against defendant No. 1. It may be, so far as I can read the judgment, that the appellant before us may show that he is not liable at all or that he may be liable for a lesser sum than is found upon the account as being that for which defendant No. 1 is liable. At one time I was disposed to think that this might stand in the way of the appellant's appeal. But I think it does not, for this reason that there is a decree affecting him and it is found, at any rate as against him to this extent that it seems to say that, on the final taking of the accounts, he may be liable in respect of some unascertained sum.

3. In the result, I must hold that the judgment and decree of the lower Appellate Court should be set aside and the suit must be dismissed as regards appellant No. 1, who will be entitled to his costs in both the lower Courts and in this Court.

Ghose, J.

4. I agree.

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