

Ramdoyal Vs. Junmenjoy Coondoo

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Court : Kolkata

Decided On : Apr-01-1887

Reported in : (1887)ILR14Cal791

Judge : Prinsep, ;Wilson and ;Norris, JJ.

Appellant : Ramdoyal

Respondent : Junmenjoy Coondoo

Judgement :

Wilson, J.

1. We think the view taken of this case by the learned Judge who heard it is correct. The plaint alleged a partnership entered into between the plaintiff and the original defendant, under which that defendant was to be the monied partner, the plaintiff was to be the managing partner, and the plaintiff was to have a certain share in the profits ; and the plaint went on to pray relief upon the footing of the partnership and in the manner usual in a partnership suit. The defendant denied the partnership, and said that the real relation between the parties was not that of partner and partner but of master and servant, that the plaintiff was a gomastah paid by a share of the profits, and that according to the long understood practice in this country (now embodied in the Contract Act) he was not a partner. The defendant also raised another objection : He said that there were three of them concerned in the matter, that the plaintiff was to have a share in the profits as

remuneration for his service as gomastah, and another man, Nittymanund Hazrah, was to have a share also under the same agreement, the original defendant being proprietor of the business. The case came on for hearing, and the plaintiff applied to have that man, Nittymanund Hazrah, joined as a defendant in the suit, which was done. There was some discussion before us as to whether the plaintiff under the circumstances was bound by his suit as a partnership suit. It would certainly be an unusual thing to allow a plaintiff, who has alleged one state of facts, as against the defendant who has denied that case and alleged another state of facts, to turn round and ask to be allowed to carry on the suit and claim relief on the ground that the defendant's statement of facts was true and his own false. But supposing that the plaintiff in this suit could be allowed to do that and to maintain this suit on the footing that he was a gomastah entitled to remuneration for his services by receiving a portion of the profits, still it is clear that his suit, as originally framed, was defective. This is not a case of one contract between the original defendant and the plaintiff, one hiring of the plaintiff as gomastah upon the terms of his receiving a share in the profits, and another contract with Nittymanund Hazrah, made separately, by which he was hired as a gomastah on the terms of his receiving a share of the profits. It is a case of three persons who in one document entered into an agreement, by which the business was to be carried on, the original defendant was to be the proprietor and the plaintiff and Nittymanund Hazrah were to be employed as gomastahs and by which, as between these three persons, it was agreed that the principal defendant as proprietor was to have an 11 1/2 anna share, the plaintiff a 3-anna share, and Nittymanund Hazrah a 1 1/2 anna share. That being the state of things, the suit, as originally framed, was clearly defective, because, when there are three persons who, under one and the same agreement amongst themselves, are entitled to share in the proceeds of a fund which they hope will be brought into existence, it is obvious that all these three persons must be necessary parties to a suit, the object of which is to take an account necessary for the purpose of ascertaining the assets of the fund and dividing them. Then it appears that, by the time Nittymanund Hazrah was made a party to the suit, the suit, as against him, was barred.

2. Now it has been held more than once that, if a suit is brought by certain persons as plaintiffs, and they omit in the first instance to join with them as co-plaintiffs

persons who are necessary parties, and these parties are afterwards added as plaintiffs at a time when for them the claim is time-barred, the whole suit must be dismissed. That was so held in the case of Ramsebuk v. Ram hall Coondoo 6 C. 815 and also Kali Das Keval Das v. Nattin Bhagvan 7 B. 217. And we can see no distinction in principle between the case of one who ought to have been originally a plaintiff and the case of one who ought to have been originally a defendant. We think therefore that the view taken by the learned Judge who heard the case is correct, and that this appeal should be dismissed with costs.

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