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Mahendra Chandra and anr. Vs. Labanya Kumar Roy and ors.

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Court : Kolkata

Decided On : Apr-20-1934

Reported in : AIR1934Cal755,153Ind.Cas.141

Appellant : Mahendra Chandra and anr.

Respondent : Labanya Kumar Roy and ors.

Judgement :

1. This is an appeal by defendants 2 and 3 in a money suit. Plaintiff's case was that defendant 1 was a managing partner of a joint family business of which his brother defendant 3 and his cousin, defendant, 2, were partners and that as the managing partner of the business defendant: 1 borrowed a sum of Rs. 700 from the plaintiffs and applied the money to the use of the business. Certain payments were made from time to time. Ultimately defendant 1 executed a fresh promissory note for Rs. 890. Defendant 1 did not contest the suit. Defendants 2 and 3 contended that there was no joint family business and that ,no money was borrowed from the plaintiffs for any such business by defendant 1. The trial Court accepted the defence, decreed the suit ex parte against defendant 1 and dismissed it with costs against defendants 2 and 3. In appeal the learned Subordinate Judge found that there was a joint family business of the three defendants, that defendant 1 who was a partner of that business borrowed the money for the firm and the money was actually entered in the books of the firm on the very day that it was borrowed and that it was for use of the firm. Defendant 1 however alone executed the promissory note. The question is whether on these

facts the learned Subordinate Judge was correct to hold that defendants 2 and 3 are liable for the money. Section 251, Contract Act, reads as follows:

Each partner who does any act necessary for, or usually done in, carrying on the business of such a partner as that of which he is a member binds his co-partner to the same extent as if he were their agent duly appointed for that purpose.

2. A partner of a business may draw Bills of Exchange and sign promissory notes on account of the partnership. In the case of 1914 P. C. 132 Karmali Abdulla v. Karimji Jiwanji, 1914 PC 132 decided by their Lordships of the Judicial Committee, there were two merchants of Mauritus who agreed to do business in partnership in sugar. The purchases were commenced by Bills of Exchange drawn partly by one partner Karim and partly by the other partner Rashid on a merchant of Bombay. Afterwards Karim paid up the amount for which he had drawn the Bills of Exchange. But Rashid having become an insolvent did not pay up his share. There upon the merchant sued Karim and their Lordships held that Karim was liable to pay the balance of the debt although the Bills of Exchange had been drawn by his partner Rashid. It is therefore clear that though the promissory note was drawn by one partner, as the money was borrowed for the firm and used for the firm all the partners are liable for the debt. This suit was based not on the promissory note but on the consideration for which the promissory note was given. In the result the appeal fails and is dismissed with costs.

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