

Asutosh Ghose and anr. Vs. Sashi Mohan Roy and ors.

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Court : Kolkata

Decided On : Jun-18-1928

Reported in : AIR1929Cal165

Appellant : Asutosh Ghose and anr.

Respondent : Sashi Mohan Roy and ors.

Judgement :

Cammiade, J.

1. This appeal is by the plaintiffs against, the dismissal of their suit in part. The suit was one for accounts in connexion with a business that had belonged to the father of the plaintiffs who died in October 1915. The defendant was the gomastha in charge of the business from time of the father of the plaintiffs. No accounts had been called for from him at any time prior to the beginning of the year 1327 B.S. that is to say, some time in April 1920 when defendant was dismissed. The accounts prayed for are for the whole of the period of the defendant's service. The Courts below found that the claim so far as it relates to the period prior to the death of the plaintiffs' father is barred by limitation. The plaintiffs have appealed. Plaintiff 1 is an adult and the second was a minor even at the time of the hearing of the appeal in the Courts below, and the plaintiffs have sought to take advantage of the provisions of Section 7, Lim. Act in order to obtain extension of time for their suit. Both the learned Courts below have held that as plaintiffs 1 and 2 were members of a joint Hindu family of which plaintiff 1 was the karta no extension of time could be availed of under the provisions of Section 7 because plaintiff 1 had authority to give a discharge not only for himself but also for plaintiff 2.

2. The appellants relied on a passage at the end of the decision of the Judicial Committee in the case of Nabin Chandra Barua v. Chandra Madhab Barua A.I.R. 1916 P.C. 148 where their Lordships say that

as two of the appellants were minors and could not give a discharge the suit was maintainable by them.

3. Obviously if there was no one capable of giving a discharge, Section 7, Lim, Act would give the appellant-plaintiff who was a minor a right to extension of time.

4. Reliance is also placed on the decision of this Court in the case of Harihar Pershad v. Bholi Pershad [1907] 6 C.L.J. That was also a suit for accounts. In that suit also there were two plaintiffs one of whom was a minor; but the elder of the two plaintiffs was not the karta of the family; and it was held, that the elder plaintiff could not give a discharge to the defendant not only because he was not the karta of the family but also because a certificated guardian had been appointed to have charge of the person and properties of the minor plaintiff. In that case the fact that there was a certificated guardian who was capable of giving a discharge was not pressed and was not considered. In the present case the elder plaintiff held two positions in which he had the right to give a discharge on behalf of the minor plaintiff. He not only was the karta of the family but also was the certificated guardian. In both these capacities he could have given a discharge to the defendant, and, therefore, the Courts below were right in the view they have taken of the suit. The appeal, accordingly, fails

and is dismissed with costs.

S.K. Ghose, J.

5. I agree.

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