

Jasoda Dassi Vs. Rameswari Dassi

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Court : Kolkata

Decided On : Jul-14-1911

Reported in : 13Ind.Cas.374

Judge : Holmwood and ;D. Chatterjee, JJ.

Appellant : Jasoda Dassi

Respondent : Rameswari Dassi

Judgement :

1. This was a Rule calling on the other side to show cause why the order of the first Subordinate Judge, Alipore, dated 24th April 1911, setting aside the decree should not beset aside on the ground that the decree so expressed to be set aside was not passed ex parte and so there was no jurisdiction to make the order.

2. Now it is perfectly clear that the order of the 24th April 1911 and the Rule both refer to the preliminary decree in this case and that on the authorities cannot be held to have been passed ex parte; for the evidence of the defendant was taken on commission and that evidence was evidently considered by the Court in its judgment where it says that it is proved and admitted that the plaintiff now represents the estate of the deceased Sib Nandan Lal, and on the authority of Kadar Khan v. Juggeswar Prasad Singh 35 C. 1023 where the case of the defendant has been partially entered into and the Counsel for the defendant applied for adjournment which was refused and thereupon withdrew from the case,

and the Court in his absence passed its judgment on the merits of the case, such decree cannot be held to be ex parte. No doubt, if the decree was obtained by fraud which the defendants maintain, they have their remedy by way of review or by a suit properly framed for the purpose. But the learned Judge goes further in his order of the 24th April. He holds that, apart from the fraud which appears to have been practised upon the defendants in respect of the preliminary decree, their agent continues to deceive them after the passing of the preliminary decree, and he says, it appears from the evidence that even after the preliminary decree Jugger Nath went on representing to the lady defendant that the case was going on well and that she had no cause for anxiety. Under those circumstances, the lady, who was at Gazipur, of course, did not return and was certainly unavoidably absent at the final hearing so that the final decree which settled the amount due was certainly passed ex parte and the defendant has succeeded in showing that she was unavoidably absent and unrepresented at that final hearing.

2. We must, therefore, make the Rule absolute as regards the preliminary decree holding,, on the authority of *Janokey Dass v. Brindabun Doss* 3 M.L.A. 175 and of *Rahimbhoy v. Turner* 18 I.A. 6 : 15 B. 155 that a decree for accounts is not a mere direction to inquire and report. It proceeds, and must always proceed, upon the assumption that the party calling for it is entitled to the sum found due, It is a decree affirming his rights, only leaving it to be inquired into how much is due to him from the party accounting; and such a decree directing the defendant to account is a final decree and one which is appealable to the Privy Council. But, while we hold that the order directing the defendant to furnish account is final and that the plaintiff has a right to obtain those accounts, we can see no reason for differing from the learned Judge that the defendant ought to have an opportunity of being heard on the question of how much is due, and we, therefore, discharge the Rule as regards the so-called final decree which ought more properly to be called a supplementary decree, and direct that the parties be given a further opportunity to show what is the amount due on the account which has been ordered. There can be no hardship to the plaintiff who alleges that he has obtained much less than he was entitled to and takes credit to himself for having remitted a large amount on the account.

3. As each party has partially succeeded, each party will bear his own costs.

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