

ORIGINAL CIVIL.

Before Imam J.

1915

May 24.

SUKUMARI GHOSE

v.

GOPI MOHAN GOSWAMI.*

Costs—Principal and Agent—Costs between Principal and Agent in a suit for account—Manager, liability of, for costs—Presidency Small Cause Courts Act (XV of 1882), s. 22—Practice.

In the matter of costs, the Court's discretion is to be exercised with special reference to all the circumstances of the case including the conduct of parties.

Sheo Dyal Tewari Choudhury v. Bishunath Tiwari Choudhury (1) referred to.

If a person takes up the management of another's estate and collects and disburses moneys, he must be ready with his account; and if his failure to perform this obvious duty necessitates a suit, then he must pay the costs.

Collyer v. Dudley (2) referred to

So, where a manager has deliberately set up a false defence, and on being ordered to render an account, submits a false account and suppresses important documents thereby hampering and prejudicing the inquiry, it is only right that he should pay the full costs of, and incidental to, the suit.

Ramgopaul Chatterjee v. Bhojan Mohan Banerjee (3) and *Hurrinath Rai v. Krishna Kumar Bakhshi* (4) referred to.

Because in a suit for an account a sum of money less than Rupees 1,000 was found due by the defendant, it does not follow that such a suit should have been instituted in the Presidency Small Cause Court, and that the provisions of s. 22 of the Presidency Small Cause Courts Act apply.

* Original Civil Suit No. 176 of 1910 and Small Cause Court Transfer Suit No. 3 of 1910.

(1) (1868) 9 W. R. 61, 63.

(2) (1823) 2 L. J. Ch 15.

(3) (1864) Coryton's Rep. 126.

(4) (1886) I. L. R. 14 Calc. 147, 159

THIS was a suit for account brought by the plaintiffs against the defendant, who had been manager of certain property situated outside Calcutta belonging to the late Mr. Lal Mohan Ghose. A preliminary decree had been passed for an account to be taken before the Assistant Referee; and the matter came before Imam J. for further directions on the Assistant Referee's report.

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Prior to the institution of this suit in the High Court, the defendant had filed a suit against the plaintiffs in the Presidency Small Cause Court for the recovery of arrears of salary. The plaintiffs did not dispute the claim, but had demanded from the defendant an account of his management; and on his denying that he was accountable at all, they filed the present suit in the High Court and obtained an order for the removal of the defendant's suit in the Presidency Small Cause Court for trial with this suit in the High Court.

Mr. H. D. Bose and *Mr. B. K. Ghose*, for the plaintiffs.

Mr. S. R. Das, for the defendant.

IMAM J. This matter comes up for further direction on the Assistant Referee's report. The principal question involved in it is one of costs. The defendant had sued the plaintiffs for arrears of salary amounting to Rs. 1,886-12-6 in the Small Cause Court of Calcutta. The plaintiffs then instituted this suit in this Court for account against the defendant. The suit in the Small Cause Court was removed to this Court for trial with this suit. The plaintiffs represent the estate of the late Mr. Lal Mohan Ghose, and it is the common case of the parties that in 1908 the defendant was the Manager of the Bairagadi estate

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belonging to the deceased. In answer to the claim of the plaintiffs for account, the defendant in his written statements stated that he was not accountable to the plaintiffs nor had he been accountable to the late Mr. Ghose, inasmuch as he had fully explained to the latter all his dealings with the said estate and his management thereof. The plaintiffs admitted the defendant's claim to Rs. 1,886-12-6 as arrears of salary. A preliminary decree was passed for accounts which were directed to be taken before the Assistant Referee. In the state of facts filed by the defendant he showed Rs. 44 or thereabouts as balance due to him. The plaintiffs disputed the accuracy of that account and sought to surcharge and falsify the defendant's state of facts and alleged that he had not accounted for various sums received by him as Manager, and that he had entered certain fictitious payments in his account. After a prolonged enquiry extending over 60 days or more, the Assistant Referee has reported that the defendant has failed to account for Rs. 716 out of the moneys collected by him as Manager of the said Bairagadi estate. From the report of the Assistant Referee, which stands confirmed by effluxion of time, it appears that the book most important for the enquiry, viz., the Talab-baki, was suppressed by the defendant though he had been called upon to produce it.

He has been guilty of suppression of other material documents also. Judging from the Assistant Referee's report the defendant's conduct deserves the fullest condemnation. His motives have been described by the Assistant Referee as "not honest from the outset." The Court's discretion in the matter of costs, as was explained in *Sheo Dyal Tewary Choudhury v. Bishunath Tewari Choudhry* (1), is to be exercised with special reference to all the circumstances of

(1) (1868) 9 W. R. 61, 63.

the case including the conduct of parties. A person who takes up the management of another's estate and collects and disburses moneys has to be ready with his account. His failure to perform the obvious duty necessitates a suit, and he must pay the plaintiff's costs: *Collyer v. Dudley* (1). In the present suit it is not merely an unreadiness to account that stands to the discredit of the defendant, but he set up a deliberately false defence that he was not accountable at all, and, when decreed to render an account, submitted a false account and suppressed important documents thereby hampering and prejudicing the enquiry before the Assistant Referee. In view of the *bonâ fide* and honest character of the plaintiff's suit and the reprehensible conduct of the defendant, I am clearly of opinion that the plaintiffs should be allowed full costs, including costs of, and incidental to, the enquiry. The case of *Ram Gopal Chatterjee v. Bhuban Mohan Banerjee* (2) is in point. There is also a higher authority in *Hurrinath Rai v. Krishna Kumar Bakshi* (3), in which their Lordships of the Privy Council ordered the defendant to pay the costs inasmuch as he had taken the untruthful course of denying his receipts, his fiduciary position, and his accountability *in toto*.

Mr. S. R. Das, on behalf of the defendant, objects to costs being allowed to the plaintiffs on the ground that the suit for account should have been filed in the Small Cause Court. He maintains that the Assistant Referee having found that only a sum of Rs. 716 had remained unaccounted for, the claim was well within the jurisdiction of the Small Cause Court, and the plaintiffs having obtained a decree for less than Rs. 1,000 in this Court, they are not entitled to any

(1) (1823) 2 L. J. Ch. 15.

(2) (1864) Coryton 126.

(3) (1886) I. L. R. 14 Calc. 147, 159.

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costs under the provisions of section 22 of the Presidency Small Cause Courts Act. I cannot accede to this contention inasmuch as the plaintiffs could institute their suit in the Small Cause Court only if they were in a position to appraise its value within the pecuniary jurisdiction of that Court, which they could not do on the facts of this case. The sum ascertained by the Assistant Referee has been arrived at by an enquiry. I do not think that a suit for account without a claim to a specific sum within the competence of the Small Cause Court can lie in that Court. But even if it were conceded that this suit was cognizable by the Small Cause Court, I would not hesitate to certify that it was fit to be brought in the High Court.

For these reasons, I allow full costs on Scale No. 2 to the plaintiffs, including reserved costs, if any. The costs will include the enquiry before the Assistant Referee and the Commission at Dacca.

The defendant will get the costs of the Small Cause Court transferred suit on the Small Cause Court scale. To the defendant is decreed the sum of Rs. 1,370-9-7½ from the plaintiffs on account of salary. Out of the said sum the sum of Rs. 1,170-12-6 will carry interest at 6 per cent. from the date of the Assistant Referee's report till the date it came to be filed.

The amount deposited by the plaintiffs in the Small Cause Court transferred suit, or any portion of it, will not be withdrawn by the defendant till the costs of both parties have been ascertained. The plaintiffs will get the costs of this application.

W. M. C.

Attorney for the plaintiff: *S. C. Mukerjee.*

Attorney for the defendant: *H. N. Dutt.*