

By THE COURT.—The order of the Court is that the appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Richards and Mr. Justice Tudball.
MULLA SINGH (PLAINTIFF) v. JAGANNATH SINGH AND OTHERS
(DEFENDANTS.)*

Contribution—Decree for costs—Some defendants not contesting suit—Liability for contribution not a necessary consequence of a joint decree.

The mere fact that a decree for costs has been made against several persons jointly will not of itself render the co-defendants liable in a suit for contribution; but if one of the defendants pays the full amount of costs and then sues his co-defendants for contribution, he should show some equity existing between himself and his co-judgement debtors making the latter liable for contribution. *Dearsly v. Middleweek* (1) referred to.

THE question in this case was whether the respondents were liable to contribute towards the amount paid by the appellant in execution of a decree jointly passed against the plaintiff and the respondents for the costs of a suit in which the parties to the present suit were arrayed as co-defendants. The facts which gave rise to the appeal are fully stated in the judgement of the Court.

Munshi *Gulzari Lal*, for the appellant, contended that the decree was joint against all, and all the persons were jointly and severally liable for the amount of the costs decreed against them and paid by the appellant alone. Under the circumstances the plaintiff alone was not liable for the costs, and as he had to pay the entire amount, for which the respondents were also liable, they must contribute their quota of the liability. He relied upon *Siva Panda v. Jujusti Panda* (2) and *Kishna Ram v. Rakmini Sewak* (3).

Pandit *Baldeo Ram Dave*, for Narain Prasad, respondent, contended that the mere fact that the costs were decreed jointly and severally against all the defendants to the original suit and that those costs were recovered from the plaintiff alone did not

* Second Appeal No. 770 of 1909, from a decree of Muhammad Siraj-ud-din, Judge, Small Cause Court of Cawnpore, exercising the powers of a Subordinate Judge, dated the 20th of April, 1909, confirming a decree of Piare Lal, Munsif of Akbarpur, dated the 24th February, 1909.

(1) (1881) L. R., 18 Ch. D., 236. (2) (1901) I. L. R., 25 Mad., 599.
(3) (1887) I. L. R., 9 All., 221.

1910

RUP RAM
v.
MUSAMMAT
REWATI.

1910
May 12.

1910

MULLA SINGH
v.
JAGANNATH
SINGH.

entitle the plaintiff to claim contribution from the defendants. The plaintiff here must show that there was some contract between him and the defendants (and there is no allegation to that effect) or some equity which created a duty on the defendants to contribute the costs in question between themselves. The joint decree for costs was conclusive between the plaintiff to that suit on one side and defendants on the other. The question in the present case was between the defendants to that suit *inter se*, and that question could not be determined in the previous suit in which they were all arrayed as co-defendants. Upon the facts found, no equity existed in favour of the plaintiff against the contesting respondent. The non-appearance of the respondents in the original suit might have rendered them liable for costs to the original plaintiff, but that created no equity in favour of the present plaintiff. There was no reason if one innocent person was made to pay the costs of a suit why another innocent person should be made to contribute. The following cases were referred to:—*Kristo Chunder Chatterjee v. Wise*, (1), *Suput Singh v. Imrit Tewari* (2), *Manja v. Kadugochen* (3), *Thangammal v. Thyjamuthu* (4), *Fakire v. Tasaddug Husain* (5) and *Dearsly v. Middleweek* (6).

Munshi Gulzari Lal, in reply referred to *Ram Prasad v. Arja Nand* (7) and *Wilson v. Thomson* (8).

RICHARDS and TUDBALL, JJ.:—The facts out of which this appeal arose are as follows:—A suit, not the present suit, was brought to enforce a mortgage. There had been five mortgages affecting the property. One Jagannath represented the mortgagors, and he was the principal defendant to the suit. The plaintiff in that suit, who was the fourth mortgagee, had paid off the first three. Narain Prasad represented the second mortgagee, who had been paid off, and also in part represented the fifth mortgagee. Mulla also in part represented the fifth mortgagee as an assignee from Narain Prasad. Narain Prasad in his written statement admitted the plaintiff's claim, and as to his own

(1) (1870) 14 W. R., C. R., 70.

(2) (1880) I. L. R., 5 Calc., 720.

(3) (1883) I. L. R., 7 Mad., 89.

(4) (1887) I. L. R., 10 Mad., 518.

(5) (1897) I. L. R., 19 All., 462.

(6) (1881) L. R., 18 Ch. D., 236.

(7) Weekly Notes, 1890, p. 161.

(8) 1875, L. R., 20 Eq., 459.

mortgage he stated that he would bring an independent suit. Mulla in his written statement, which was a separate one from that of Narain Prasad, stated that he had nothing to do with the property, and that the real person interested was Narain Prasad. Jagannath disputed the first four mortgages and succeeded in getting in the first instance the suit dismissed. The plaintiff appealed making Mulla and Narain Prasad respondents as well as Jagannath. Jagannath alone appeared. Narain Prasad and Mulla were unrepresented. The Court allowed the appeal, and a decree followed ordering the respondents, which of course included Narain Prasad and Mulla, to pay the costs incurred by the appellant. Jagannath, it appears, is a man of straw, and when the decree-holder came to execute his decree for costs, he executed it against Mulla alone, who was obliged to pay all the costs. Mulla then instituted the present suit against Jagannath and other persons, including Narain Prasad, claiming contribution in respect of the decree for costs which he had been obliged to satisfy. The court of first instance held that it was Jagannath alone who had caused all the trouble, and it gave Mulla a decree as against him exempting the other defendants including Narain Prasad. The lower appellate court confirmed the decree of the Munsif. Hence the present appeal. The appellant contends that he and the judgement-debtors other than Jagannath were all equally innocent, and that he having paid the decretal amount is entitled to contribution. Of the respondents Narain Prasad alone appears, and he contends that it is necessary, before the plaintiff can obtain contribution, that he should show some equity existing between the plaintiff and his co-judgement-debtors making the latter liable to contribution. In the present case if either Mulla or Narain Prasad had appeared in the appellate court in all probability there would have been no decree for costs against either one or the other of them. Both neglected to take this precaution, and it is contended that the mere fact that a binding and conclusive decree is passed between the plaintiff in the original suit and the defendants to that suit does not render the judgement-debtors liable as a matter of course, and that as between the judgement-debtors the decree is not in any way conclusive. After carefully considering the matter we have come to the conclusion that the

1910

MULLA SINGH
v.
JAGANNATH
SINGH.

1910

MULLA SINGH
v.
JAGANNATH
SINGH.

decision of the court below ought not to be disturbed. We have been referred to no case in which the mere fact that a decree for costs was made against several persons rendered the co-defendants liable in a suit for contribution. In the case of *Dearsly v. Middleweek* (1) an injunction with costs had been granted against two defendants, one a tenant of the plaintiff, and the other an under tenant. The injunction was granted in respect of a covenant in lease of a certain messuage not to use the same as a beershop. The tenant then brought a suit for a rescission of the under-lease against the under-tenants, and the under-tenant by way of defence and counter claim asked for contribution in respect of the costs of the first action, all of which had been paid by him. FRY, J., said:—"This is an application for which there appears to be no precedent, and I shall not make one. I shall follow the dictum which has been cited to me from the Court of Appeal in *Real and Personal Advance Company v. McCarthy* and hold that a defendant cannot proceed against a co-defendant for contribution in respect of costs to which both are equally liable." In the present case the plaintiff brought all the trouble upon himself by not appearing in the appellate court and seeing that a proper order so far as he was concerned, was made as to costs. We cannot see that he has any right against the respondent Narain Prasad who was equally innocent with him. As the appeal proceeds on grounds common to all the respondent excepting Jagannath, the order of the court below will stand as against them also. The appellant must pay the costs of Narain Prasad.

Appeal dismissed.

(1) (1881) L. R., 18 Ch. D., 236.