

1918

COLLECTOR OF
MORADABADv.
MAQSOUD-UL-
RAHMAN.

case upon the merits, compelled to send the case back for a re-hearing, probably before another judge, two years at least after the original hearing of the suit. It is suggested that, even after that has taken place and it has come to this Court again, there may still be an appeal to the Privy Council on the main question of registration. All these proceedings have a tendency to prolong to an unspeakable extent the decision of a comparatively trivial dispute and to accumulate the expenditure of costs out of all proportion to the issues involved. Of course where there is a real preliminary point, it is a totally different matter. No doubt it is necessary sometimes to decide as a preliminary matter whether the court is competent to hear a case at all. But when every thing has been done to enable the trial court to dispose of a case, I think it is a great misfortune, and it happens a great deal too often, that a judge gets rid of it by disposing of some technicality raised by one of the parties leaving the merits wholly untouched. I agree with my brother that this is a preliminary point and that the case must go back.

BY THE COURT.—We set aside the decree of the court below and remand the case to that court under order XII, rule 23, of the Code of Civil Procedure for re-trial and disposal on the merits. We leave the costs of this appeal to be costs in the cause.

Appeal decreed and cause remanded.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pramada Charan Banerji.*

1918
March, 7.

SHANKAR LAL (PLAINTIFF) v. RAM BABU (DEFENDANT),*

*Partnership—Death of one partner leaving a minor son—Suit by surviving
partner against minor for rendition of accounts—Procedure.*

One of two partners in a specific business, who was alleged to have been the managing partner, died, leaving him surviving a minor son. The other partner sued the minor, as his father's representative, for rendition of accounts and for payment of what might be found due to him (the plaintiff).

Held that the suit was maintainable; but the proper procedure was for the court to direct both sides to produce their accounts and thereafter to pass a decree for whatever sum might appear to be due from one party to the other.

* Second Appeal No. 770 of 1916 from a decree of D. R. Lylo, District Judge of Agra, dated the 9th of February, 1916, confirming a decree of P. K. Ray, Munsif of Agra, dated the 12th of March, 1915.

THE facts of this case were as follows :—

Puran Chand, defendant's father, took a contract of the grass farm for one season from the Cantonment Magistrate at Agra in July, 1912, and made the plaintiff his partner. Plaintiff's case was that he deposited with Puran Chand his share of the capital, that most of the sums realized remained with Puran Chand, who used to keep the accounts. Puran Chand having died, plaintiff instituted the present suit against the defendant, Puran Chand's minor son, for settlement and rendition of accounts. In reply the defendant urged that he could not be called upon to render accounts and that as a matter of fact the plaintiff himself had realized a much larger sum than was due to him. The courts below dismissed the suit holding that the defendant, being merely the personal representative of a deceased partner, was not the accounting party. The plaintiff appealed.

Pandit *Kailas Nath Katju* (with him Pandit *Shiam Krishna Dar*), for the appellant.

Munshi *Mangal Prasad Bhargava*, for the respondent.

RICHARDS, C. J., and BANERJI, J.:—We think that both the courts below have taken an extremely narrow and technical view of this case. It appears that one Puran Chand had a lease of the grass farm at Agra. He took into partnership the plaintiff. They were to provide the capital between them and to share in the profits. Puran Chand died. The plaintiff then instituted the present suit, alleging that he had received certain money, and that Puran Chand and after his death his minor son received further money in connection with the joint enterprise. He alleged that there was a much larger sum received by Puran Chand's estate than he had received and that there would be a balance payable to him upon taking accounts. He accordingly asked that the accounts should be taken. The courts below have dismissed the suit, holding that it was not maintainable and that the minor could not be liable to render accounts. It seems to us (assuming the plaintiff's allegation to be true), that it would have been a very right and proper thing that the minor should have been ordered to render an account of the moneys received by Puran Chand or after his death by his estate in respect of the enterprise. It is said that he (the plaintiff)

1918

SHANKAR LAL
v.
RAM BABU.

1918

SHANKARLAL
v.
RAM BABU.

ought to have claimed a definite sum. It is only after he knew what had been received by the other side and what expenses had been incurred that he would be in a position to name the sum that ought to be paid to him. The learned District Judge says that it will be most unfair that the plaintiff should escape rendering an account whilst the other side was ordered to render accounts. We cannot understand what there was to prevent the courts below, if it was objected on behalf of the minor defendant that it was not admitted that the plaintiff had only received the sum he alleged, to have directed that he also should furnish an account of what he had received and what he had expended. We think that the personal representative of a deceased partner is bound to give an account of what has been received on behalf of the partnership. Of course the personal representative will only be liable for the person he represents, to the extent of the assets he receives. What we think the court below ought to have done was to have passed the preliminary decree directing that each party should furnish an account of what has been received and what has been spent. These accounts after they have been filed can be accepted or objected to in the ordinary way and dealt with by the court. It may be objected that the minor is unable to give the accounts. The mere fact that he is personally unable to give the accounts will not absolve him from the obligation of getting the accounts prepared by the persons who were conversant with what took place and what money was received and spent and who were acting either for Puran Chand during his life or for the minor and the estate of Puran Chand after his death. We allow the appeal, set aside the decrees of both the courts below and remand the case to the court of first instance, through the lower appellate court, with directions to re-admit the suit in its original number and to proceed to deal with the same having regard to what we have said above. The court can deal with the case as near as possible on the lines of the provisions of order XX, rule 15, of the Code of Civil Procedure making a preliminary decree for an account. Costs here and heretofore will be costs in the cause,

Appeal allowed and cause remanded,