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BARKAT v. MST. HAKAM BIBI.

It is unfortunate that these poor people should be put to much expense and inconvenience by an abortive trial like this.

N. F. E.

Application for confirmation rejected.

Case remanded.

APPELLATE CIVIL.

Before Addison and Bhide JJ.

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Oct. 30.

DIWAN CHAND-PARMA NAND AND OTHERS (DEFENDANTS) Appellants

versus

RAM DAS-UTTAM CHAND (PLAINTIFFS) Respondents.

Civil Appeal No. 1954 of 1926.

Partnership-Debt—payment to, and release by, one partner—validity of—in absence of fraud or collusion.

The plaintiff-firm consisting of three partners, including one *B.R.*, sued the defendant-firm for Rs. 2,000. *B.R.* was an active partner and in fact manager of the plaintiff-firm. He owed Rs. 1,278-12-6 to the defendant-firm while the defendant-firm owed the plaintiff-firm that amount. At the request of *B.R.* his liability to the defendant-firm was cancelled by his cancelling the liability of the defendant-firm to the plaintiff-firm. The first Court found that *B.R.* had been giving other discharges like that disputed in the present case. It also found that there was no evidence that this was done *mala fide* or to the prejudice of the plaintiff-firm or in fraud thereof.

Held, that the transaction was a good one and binding on the plaintiff-firm on the well settled principle of law that payment to a partner is a valid payment to a firm and a release by a partner is also valid; the other partners being bound by such acts unless there has been fraud or collusion.

Sheikh Ibrahim Tharagan v. *Rama Aiyar* (1), *Annapurnamma* v. *Akkayya* (2), *Palaniappa Chettiar* v. *Veerappa Chettiar* (3), *Annamalai* v. *Annamalai* (4), *Hodi* v. *Nidha* (5), and *Veerasawmi Naicker* v. *Ibramsa Rowther* (6), relied upon.

Baikunta Nath v. *Hara Lal* (7), distinguished.

Second appeal from the decree of Lala *Jaswant Rai*, Taneja, *District Judge, Shahpur, at Sargodha, dated the 1st May 1926, modifying that of* Lala *Ram Rang, Subordinate Judge, 3rd Class, Sargodha, dated the 31st August 1925, and directing that the defendants do pay to the plaintiffs the sum of Rs. 1,559-7-3.*

BADRI DAS, for Appellants.

NANAK CHAND, for Respondents.

The judgment of the Court was delivered by—

ADDISON J.—The plaintiff-firm consisting of three partners, Ram Das, Uttam Chand and Bashi Ram, sued the defendant-firm for Rs. 2,000, the balance due on certain transactions between them.

The trial Court decreed the sum of Rs. 68-10-9 with proportionate costs in favour of the plaintiff-firm and dismissed the rest of the claim with costs to the defendant-firm. There was an appeal by the plaintiff-firm to the District Judge who granted a decree for Rs. 1,559-7-3 with proportionate costs of both Courts. Against this decision the defendant-firm has appealed.

The lower appellate Court allowed in addition to what was allowed by the trial Court an item of Rs. 1,278-12-6 plus interest on that item, and the appeal is confined to the dispute about this item and

(1) (1912) I. L. R. 35 Mad. 685.
(2) (1913) I. L. R. 36 Mad. 544 (F.B.).
(3) (1918) I. L. R. 41 Mad. 446.
(4) (1919) 52 I. C. 456.
(5) (1920) 54 I. C. 273.
(6) (1909) 1 I. C. 200.
(7) (1911) 9 I. C. 116.

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DEWAN CHAND-PARMA NAND v. RAM DAS-UTTAM CHAND.

its interest. Bashi Ram was an active partner and, in fact, manager of the plaintiff-firm. He owed Rs. 1,278-12-6 to the defendant-firm while the defendant-firm owed the plaintiff-firm that amount. At the request of Bashi Ram his liability to the defendant-firm was cancelled by his cancelling the liability of the defendant-firm to the plaintiff-firm. This was held to be a good transaction by the trial Court. It further found that Bashi Ram had been giving other discharges like that disputed in the present case. It also found that there was no evidence that this act was done *mala fide* or to the prejudice of the plaintiff-firm or in fraud thereof. On appeal the learned District Judge also held that Bashi Ram had been setting off items in this way in other cases but considered that that did not affect the merits of the present case. He purported to follow *Baikunta Nath* v. *Hara Lal* (1), and, though there was no evidence of prejudice to the plaintiff-firm, he held that the fact that the other co-partners had been prejudiced by the amount due to the firm having been credited to the private account of one of the partners was obvious enough and required no proof. He has thus assumed that such an act would be always prejudicial to the partnership.

There are numerous authorities which show that payment to a partner is a vaild payment to a firm, while a release by a partner is also valid : the other partners are bound by such acts unless there has been fraud or collusion.

In *Sheikh Ibrahim Tharagan* v. *Rama Aiyar* (2), it was held that payment to one of several joint creditors would not operate as a payment to all the

(1) (1911) 9 I. C. 116. (2) (1912) I. L. R. 35 Mad. 685.

creditors if the payment was fraudulently made to one and not for the benefit of all. In this ruling the general principle was assumed that such payments are valid, but it was held that they would not be valid if there was fraud or if the payment was obviously for the benefit of one.

In *Annapurnamma* v. *Akkaya* (1), the general principle is enunciated that one of several payees of a Negotiable Instrument can give a valid discharge of the entire debt without the concurrence of the other payees.

In *Palaniappa Chettiar* v. *Veerappa Chettiar* (2), it was held that a partner can release a partnership claim and that the surviving partners have a right to do so after the death of a partner. It was further held that, if such a release by a partner is fraudulent, the other partners can avoid it and seek to recover their share of the released debt, but that the legal representatives of the deceased partner cannot do so as such a right is personal to the partners. It is clear from these authorities that a partner has authority to release debts and to give receipts for the debts of a partnership.

In *Annamalai* v. *Annamalai* (3), it was held that a partner was competent to give a valid discharge of a debt due to the partnership even after its dissolution.

In *Hodi* v. *Nidha* (4), it was held that where payment had been made to one partner the firm could not sue for the debt.

In *Veerasawmi Naicker* v. *Ibramsa Rowther* (5), it was held that the general rule was that a partner

(1) (1913) I. L. R. 36 Mad. 544 (F.B.).
(2) (1918) I. L. R. 41 Mad. 446.
(3) (1919) 52 I. C. 456.
(4) (1920) 54 I. C. 273.
(5) (1909) 1 I. C. 200.

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could give a valid discharge of a debt due to the partnership, but that rule did not apply if the discharge so given was in fraud of the aggrieved partner or was the result of collusion between the partner giving the discharge and the debtor.

Reliance, however, was placed, by the other side, on *Baikunta Nath* v. *Hara Lal* (1). It was held there that one partner could not discharge a separate debt of his own by setting it off against a debt due to his firm, to the prejudice of his co-partners. If this authority be accepted it still does not help the respondents' firm. It must be proved that the act of setting off was fraudulent, or collusive, or done to the prejudice of the plaintiff-firm. Such an adjustment may be in many cases a matter of convenience. In itself it does not necessarily amount to a fraud and does not necessarily prejudice the plaintiff-firm. There is no evidence that there was any fraud or that there has been any prejudice to the plaintiff-firm by the fact that Bashi Ram, one of its members, set off his debt against the sum in question. Further, seeing that a partner can give a valid discharge of a debt due to a partnership and can even release it, provided there is no fraud, there seems to be nothing against such an adjustment as has taken place in the present case, provided again that there has been no fraud or prejudice to the plaintiff-firm.

Clearly it is open to us on second appeal to interfere as it is obvious from the judgment of the District Judge that there was no proof of any fraud or prejudice to the plaintiff-firm. He erred in law in holding that the mere fact of the adjustment in question having taken place was prejudicial to the plaintiff-firm.

(1) (1911) 9 I. C. 116.

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For the reasons given we accept the appeal, set aside the order of the District Judge and restore the order of the trial Judge, decreeing a sum of Rs. 68-10-9 with proportionate costs on that sum and dismissing the rest of the claim with costs to the defendant-firm. The appellant-firm will also have its costs in this Court and in the lower appellate Court.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Addison and Bhide JJ.

1930

Oct. 31.

LACHHMAN AND OTHERS (DEFENDANTS) Appellants.

versus

BANSI AND ANOTHER (PLAINTIFFS) *MST.* RUP DEVI AND OTHERS (DEFENDANTS) } Respondents.

Civil Appeal No. 2502 of 1926.

Civil Procedure Code, Act V of 1908, Order XXII, Rule 9—Suit for declaration by some reversioners—previous suit by another reversioner on the same cause of action, which abated—whether bars present suit—Second Appeal—new plea raised in—point of law—whether entertainable—if can be decided on material on the record.

In a suit by *B.* and *S.* for a declaration that a certain alienation of land made by four Hindu widows should not affect their reversionary rights, it was pleaded by defendants for the first time in second appeal that the suit was barred under Order XXII, rule 9, Civil Procedure Code, inasmuch as a previous suit on the same cause of action by another reversioner (*A*) had abated on his death and the application to bring his representatives on to the record had been dismissed as time-barred; that *B* and *S* were parties to that previous suit as *pro formâ* defendants; and that on the death of *A*,