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for such a double transaction by way of mutual redemption appears to have been due to the fact that the properties held in mortgage by each were not identical (see page 181).

I therefore concur in holding that under the circumstances of the present case the appellant is entitled to redeem on the terms stated by my learned colleague, and that the decree of the lower Court should be modified accordingly. I also concur in the order as to costs.

Decree varied.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1903. *September* 16.

SHIDLINGAPPA BIN IRAPPA AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SHANKARAPPA BIN KARABASAPPA ITTIGI (ORIGINAL PLAINTIFF), RESPONDENT.*

Partnership—Dissolution of partnership—Appointment of Receiver—Debt of the firm—Decree against one partner—Satisfaction of the decree by the partner—Suit by the partner against his co-partners for contribution—Court—Practice and procedure.

The plaintiff and defendants traded in partnership from 1884 to 1894. In 1894 a suit for dissolution of the partnership was instituted with the result that on the 11th June, 1897, a decree was passed appointing a Receiver with the usual directions for accounts and inquiry. In the meanwhile, J., a creditor of the partnership, sued the plaintiff and defendants for the debt due to him, but the Court passed a decree against the plaintiff alone, leaving his rights against the defendants to be settled in the accounts under the decree dated the 11th June, 1897. The plaintiff satisfied J.'s decree, which was for Rs. 5,561-5-9, by means of a *hawala* under which S. and K. paid on his account Rs. 5,400 to J. The balance Rs. 161-5-9 due under the decree was paid to J. by plaintiff himself. The plaintiff then instituted a suit to recover from the defendants their share of the decretal debt. The Subordinate Judge awarded the plaintiff's claim. On appeal,

Held, (1) that as J.'s decree had been satisfied by the plaintiff becoming liable to S. and K., he was entitled to call upon the defendants to enable him to meet their share of the liability;

(2) that it was open to any creditor of the partnership to sue the partners and obtain a decree for the recovery of his debt, but no creditor, after the appointment of a Receiver, could execute any decree, obtained after that

* First Appeal No. 35 of 1903.

appointment, to the prejudice of the other creditors of the partnership. To obtain satisfaction of his decree the creditor was bound to go to the Court which had appointed the Receiver and take its directions;

(3) that the plaintiff's right to recover the amount he claimed from the defendants depended, firstly, upon the result of the accounts as between him and the defendants as partners, directed to be taken in the decree which declared the partnership dissolved and appointed a Receiver; and, secondly, upon whether J. could, under that decree and upon the accounts consequent upon it, claim more than a rateable share of his money advanced to the partnership, as against the other creditors, if any, of the partnership.

APPEAL from the decision of R. R. Gangolli, First Class Subordinate Judge of Dhárwár.

Suit for contribution. The plaintiff and defendants traded in partnership at Gadag from 1884 to 1894. During the continuance of the partnership the firm had to borrow money from time to time from one Jivaji Doraji.

In 1894 a suit was brought for the dissolution of the partnership, and on the 11th June, 1897, a decree was passed, appointing a Receiver with the usual directions for accounts and inquiry.

In the meanwhile, Jivaji Doraji filed Suit No. 55 of 1896 against plaintiff and defendants to recover money due to him by the partnership. On the 14th August, 1897, the Subordinate Judge passed a decree against plaintiff alone. The plaintiff appealed to the District Court, but without success.

Jivaji executed the decree against plaintiff who paid its amount (Rs. 5,561-5-9) by means of a *havala* under which two persons, Satraji Hiraji and Kesarmal, paid on his account Rs. 5,400 to Jivaji, and the balance Rs. 161-5-9 was paid in cash by the plaintiff. The plaintiff and his brother executed two promissory notes to Satraji Hiraji and Kesarmal, each for Rs. 2,700.

The plaintiff then sued the defendants to recover from them their share of the decretal debt.

The Subordinate Judge decreed the plaintiff's suit.

The defendants appealed to the High Court contending (*inter alia*) that the lower Court erred in holding that the present suit was legally maintainable notwithstanding a formal order for dissolution and winding up relating to this partnership; that the lower Court did not correctly understand the preliminary

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contention of the defendants which was that the settlement of all liabilities as between the partners *inter se* must be in the proceedings in the suit for dissolution and winding up and not by a subsequent and separate suit; and that the lower Court ought to have held that the suit of Jivaji himself was bad as the same should have been brought against the Receiver who at the date of the suit was the only person entitled to represent the partnership.

Mr. *Branson*, with Mr. *M. B. Chaubal*, for the appellants.

Mr. *Setlur*, with Mr. *Shamrao Vithal*, for the respondent.

CHANDAVARKAR, J.:—This was a suit for contribution instituted by the plaintiff (respondent) under the following circumstances:—

The plaintiff and the defendants traded in partnership from 1884 to 1894. In 1894 a suit for dissolution of the partnership was instituted with the result that on the 11th of June, 1897, a decree was passed, appointing a Receiver with the usual directions for accounts and inquiry. In the meantime, one Jivaji Doraji, a creditor of the partnership, sued the plaintiff and the defendants for the debt due to him, but the Court passed a decree against the plaintiff alone, leaving his rights against the defendants to be settled in the accounts under the decree of the 11th of June. The plaintiff satisfied the decree of Jiwaji, which was for Rs. 5,561-5-9, by means of a *hawala* under which two persons, Satraji Hiraji and Kesarmal, paid on his account Rs. 5,400 to Jiwaji, and the balance Rs. 161-5-9 due under the decree was paid by the plaintiff himself. The plaintiff and his brother executed to Satraji Hiraji and Kesarmal two promissory notes, each for Rs. 2,700, on the 3rd April 1898. The plaintiff now seeks to recover from the defendants their share of the decretal debt which was due to Jiwaji and which he has discharged in the manner above stated.

The Subordinate Judge, who tried this suit, has awarded the plaintiff's claim, but it is contended before us that the plaintiff cannot seek contribution for more than what he has actually paid to Jiwaji. The argument is that as the plaintiff has satisfied Jiwaji's decree to the extent of Rs. 5,400 by merely executing promissory notes for the amount to Satraji Hiraji and Kesarmal, he is not entitled to recover any portion of that amount from the

defendants in the absence of actual cash payment by him. But there is no question that Jiwaji's decree has been satisfied by the plaintiff becoming liable to Satraji and Kesarmal; he is, therefore, entitled to call upon the defendants to enable him to meet their share of the liability.

The point that has been much argued, however, is that the suit is not maintainable at all, because, it is urged for the defendants (appellants), the debt in respect of which this suit for contribution was brought related to the partnership, and the plaintiff cannot treat it as an isolated transaction, but must include it in a suit between the partners for dissolution and accounts of the partnership.

The general rule of law is, as was held in *Sadler* v. *Nixon*,[1] that one of several partners in a trade, who pays money on account of his copartners, cannot maintain an action against them for contribution on the ground that he made such payment not voluntarily but by compulsion of law, the reason of the rule being that justice cannot be done between the partners without balancing the partnership accounts and that "the partner suing is bound jointly with the other partners to contribute to that and all the other partnership debts" (per Bayley, J., in *Goddard* v. *Hodges*[2]). As between the parties to the present suit, however, there has been already a decree dissolving the partnership, ordering accounts to be taken and the debts of the partnership to be paid. The mutual rights and liabilities of the parties to this action for contribution must, therefore, be decided with reference to that decree. By it not only was the partnership declared dissolved and accounts directed to be taken, but a Receiver was appointed to recover outstandings, pay debts, and do all that might be necessary. By the appointment of a Receiver the Court must be taken to have aimed at equality amongst the creditors. It was open, of course, to any creditor of the partnership to sue the partners and obtain a decree for the recovery of his debt; but no creditor, after the appointment of a Receiver, could execute any decree, obtained after that appointment, to the prejudice of other creditors of the partnership. To obtain satisfaction of it he was bound to go to the Court which had appointed

(1) (1834) 5 B. & Ad. 936. (2) (1832) 1 C. & M. 33 at p. 38.

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the Receiver and take its directions. That was recognised as the law in such cases in *Kewney* v. *Attrill*.[1] In the present case Jiwaji, whose decree the plaintiff claims to have satisfied, held a decree not against all the partners but one only, *i. e.*, the present plaintiff; and the plaintiff cannot claim any right higher than that which Jiwaji could have legally claimed had he held a decree against all the partners. The plaintiff's right to contribution has not been questioned before us on the ground that Jiwaji's decree was against the plaintiff only, though the defendants were parties to the suit in which it was passed. The only question of importance that has been raised seriously is that the Subordinate Judge's decree, now given against the defendants, is bad because it ignores his previous decree in the partnership suit appointing a Receiver. The contention, we think, is sound and must be allowed. Whether and how far the accounts directed by that decree have been prosecuted and the creditors of the partnership paid does not appear clearly from the evidence in the present case, and the question was not gone into before the Subordinate Judge at the trial of this suit, though it was a material question.

As has already been stated above, Jiwaji, as a creditor of the partnership, obtained his judgment against the plaintiff alone in respect of the partnership debt after judgment had been pronounced for dissolution of the partnership and a Receiver had been appointed. The present suit falls, then, within the principle of *Kewney* v. *Attrill*,[1] where Kay, J., said that "by the appointment of a Receiver the Court aims at equality amongst the creditors." Whether Jiwaji was entitled to full satisfaction or only to a rateable payment along with other creditors is a question which could be gone into only in the proceedings under the decree whereby the Receiver was appointed. In the case cited, Mr. Justice Kay gave the judgment-creditor of the partnership there concerned a conditional charge on the moneys which were in the hands of, or might be taken possession of by, the Receiver, and he also directed that the judgment-creditor must undertake to deal with the charge according to the order of the Court. We think that whether the plaintiff be regarded as standing in the shoes of his judgment-creditor Jiwaji, or as a partner claiming contribution

(1) (1886) 34 Ch. D. 345 at p. 346.

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against his copartners, he cannot claim higher rights than Jiwaji could have, according to law, claimed. In either view the plaintiff ought to have carried his claim against the defendants to the Court which had passed the decree for dissolution and accounts and obtained an order from the Court to the Receiver to treat his present claim as an incident in the taking of the accounts. Whether the accounts are still open we are not in a position to say, as the evidence is meagre, and the Subordinate Judge has not dealt with this important question. But we do not think we should prolong the present litigation by fresh inquiry in the present suit. The plaintiff's right to recover the amount he claims from the defendants depends, firstly, upon the result of the accounts as between him and the defendants as partners, directed to be taken in the decree which declared the partnership dissolved and appointed a Receiver; and, secondly, upon whether Jiwaji could under that decree and upon the accounts consequent upon it claim more than a rateable share of his money advanced to the partnership, as against the other creditors, if any, of the partnership. We must, therefore, amend the decree of the Subordinate Judge by declaring that the plaintiff is entitled to recover from the defendants only so much of his claim in the present suit as may be directed by the Court executing the decree in suit No. 486 of 1894.

Parties to bear their own costs throughout.

Decree amended.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

1903. *September* 17.

DATTARAM GOVINDBHAI GUZAR (ORIGINAL DEFENDANT No. 3), APPELLANT, *v.* VINAYAK BALKRISHNA AGASHE AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS 1, 2, 4 AND 5), RESPONDENTS.*

RAMCHANDRA ANANT PARCHURE AND ANOTHER (ORIGINAL DEFENDANTS 1 AND 2), APPELLANTS, *v.* VINAYAK BALKRISHNA AGASHE AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS 3, 4 AND 5), RESPONDENTS.*

Bombay Minors' Act (XX of 1864), section 18—Minor—Administrator—Sanction of the Court—Transfer of minor's interest as mortgagee in possession—

* Joint Appeals 103 and 110 of 1900.