

1905
JAN. 18.
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APPEAL
FROM
ORIGINAL
CIVIL.
—
32 C. 401=9
C. W. N. 231.

of Lords in *Reddaway v. Banham* (1), the injunction granted does not prevent the defendants from using the words "Camel Hair" in connection with the belting they sell, it only prevents them from so using them as to mislead the public.

The appeal must be dismissed with costs.

SALE, J. I agree.

HARRINGTON, J. I also agree.

Appeal dismissed.

Attorneys for the appellants : *Morgan & Co.*

Attorneys for the respondents : *Wilson & Co.*

32 C. 418.

[418] APPELLATE CIVIL.

Before Mr. Justice Harrington, Mr. Justice Bodilly and Mr. Justice Mookerjee.

BISSESWAR ROY *v.* DURGADAS MEHARA.*

[9th January, 1905.]

Succession Certificate—Suit for account—Debt, recovery of—Succession Certificate Act (VII of 1889), s. 4 (1) (a).

A suit for account is not a suit for the recovery of a debt within the meaning of s. 4 of the Succession Certificate Act.

The plaintiff as heir of a deceased person sued the defendant, who was the latter's agent, for an account :—

Heid, that he was entitled to judgment against the defendant for an account without producing a succession certificate.

Sabju Sahib v. Noordin Sahib (2) referred to.

[Dist. 12 C. W. N. 145=7 C. L. J. 658 ; Ref. 36 Cal. 986 ; Fol. 12 M. L. T. 202=1912 M. W. N. 1115=16 I. C. 224.]

SECOND APPEAL by the defendant, Bisseswar Roy.

The plaintiff, Durga Das, and the *pro forma* defendant, Paresh Nath Das, who refused to join with him in the action, were the brothers of one Gurudas. On the death of Gurudas his widow, Nobinkumari, succeeded to his estate. A son adopted by her died unmarried during her lifetime. The principal defendant, Bisseswar Roy, served Nobin Kumari as her *ammokhtar* and *tehsildar* from the year 1288 till her death in Asarh 1304. The plaintiff having jointly with his brother succeeded to the estate on the death of the widow brought this suit against Bisseswar Roy, making his co-heir a *pro forma* defendant, for an account of the period between 1288 and Asarh 1304 and for a decree for whatever sum might be found due, and for other reliefs.

The defendant pleaded, *inter alia*, that the plaintiff not having obtained a certificate under Act VII of 1889 was not entitled to [419] sue and an issue was framed—"whether the plaintiff can sue without a succession certificate."

At the trial the plaintiff produced a certificate under Act VII, and the issue was decided in his favour. On the merits, the Munsif found that accounts had been rendered up to 1299, and that the defendant's service during the rest of the period was not that of a regular servant ; he accordingly dismissed the suit.

* Appeal from Appellate Decree, No. 2864 of 1902, against the decree of Moti Lal Sinha, Subordinate Judge of Burdwan, dated Nov. 11, 1902, modifying the decree of Purna Chandra Chowdhry, Munsif of Burdwan, dated July 16, 1901.

(1) [1896] A. C. 199.

(2) (1898) I. L. R. 22 Mad. 189.

The Subordinate Judge, on appeal, disagreed with the latter finding, and held that the defendant No. 1 was liable to render an account from 1299 to Asarh 1304. He remanded the suit to the first Court with the following direction:—

“That an account may be taken of moneys received by the defendant No. 1 on behalf of Nobin Kumari from 1299 to Asarh 1304. After adjustment of accounts for the above period the lower Court will determine whether any and what amount is due to the plaintiff from the defendant No. 1, and pass a decree accordingly.”

The defendant No. 1 appealed to the High Court.

Babu *Digambar Chatterjee*, for the appellant, contended that the succession-certificate produced by the plaintiff was for realisation of money due from the debtor “for an account adjusted for the period of *gomashtagiri*”; it did not therefore entitle the plaintiff to recover the sum to be found due from the defendant upon taking accounts.

[HARINGTON J. But is a claim for account a *debt* within the meaning of the Succession Certificate Act?

At any rate, the succession-certificate did not entitle the plaintiff to the decree made.

[MOOKERJEE J. referred to *Sabju Sahib v. Noordin Sahib* (1).]

Babu *Mahendranath Roy*, for the plaintiff-respondent, contended that there was a sufficient specification of the right claimed by the plaintiff in the succession certificate produced, specially when taken with the plaint. The objection is a highly technical one and there is no merit in it. Besides, in this country the law does not require that a Hindu should take out either a succession-certificate or letters of administration to establish heirship. The present objection as to the character of the succession certificate was not taken in the Court's below.

[420] Babu *Digambar Chatterjee*, in reply.

HARINGTON J. This is an appeal by the defendant against the judgment of the Subordinate Judge of Burdwan.

The plaintiff sued the defendant alleging that he was agent for the widow of the plaintiff's deceased brother and he joined his other brother, who was unwilling to sue, as a defendant in the action. The claim was for an account, and the lower Appellate Court has found that the defendant is liable to render an account to the plaintiff of his dealings with the deceased lady's property from the year 1299 up to the month of Asarh 1304.

The defendant appeals against this judgment on the ground that the plaintiff, who has taken out a certificate under the Succession Certificate Act, has not been authorized under that certificate to claim any debt due from the defendant under these circumstances. But the answer to the point made by the appellant is that the plaintiff has not sued for a debt at all. All that is asked is that the defendant shall be called upon to render an account as an agent of the lady whose heirs the plaintiff and his brother are.

Now it may be that when the account is taken nothing will be found due: in my opinion it cannot be said that an action claiming an account can be accurately described as an action of debt. It is conceded that an heir is entitled to bring an action of account as distinguished from an action of debt without taking out letters of administration.

In my opinion the provisions of the Succession Certificate Act do not bar the plaintiff from bringing such an action. That being so the succession-certificate was unnecessary before the present suit was brought; the

(1) (1898) 17 L. R. 22 Mad. 139.

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judgment therefore in favour of the plaintiff as against the defendant for an account is correct and the appeal must be dismissed with costs.

BODILLY J. I am of the same opinion.

MOOKERJEE J. I agree. I do not think that a suit for account can rightly be regarded as a suit against the debtor of a deceased [421] person for payment of his debt. I take the word "debt" in its ordinary and common acceptation, meaning all moneys which the deceased was entitled to receive as certain liability on bonds and other contracts.

In the case of *Sabju Sahib v. Noordin Sahib* (1) a similar question appears to have been raised. There a Mahomedan being the son of a deceased member of a firm brought a suit as his legal representative against the surviving partners, praying for an account of the partnership assets and for payment to him of the amount which might be found due to the share of the deceased. The plaintiff had neither letters of administration nor a succession certificate; and it was contended on behalf of the defendant that the plaintiff was not entitled to maintain his action. Mr. Justice Shephard, then Officiating Chief Justice, held that the plaintiff's claim being unliquidated was not a debt within the meaning of the Succession Certificate Act, 1889, section 4 (1), (a). Mr. Justice Benson differed from this view, and he held that the word "debt" must be understood as including not only debts due to the deceased at the time of his death, but also debts accruing due to his estate, or ascertained to be due to his estate after his death up to the date on which the inclusion of the debt in the certificate is applied for just as the amount of a debt includes interest due thereon up to that day. There being this difference of opinion, the case was referred to Mr. Justice Subramania Ayyar, and that learned Judge relying upon the cases of *Johnson v. Diamond* (2) and *Penta Reddi v. Anki Reddi* (3) held that the claim could not rightly be regarded as a debt, and that it was an abuse of language to call such liability a debt. I entirely agree in this view of the law, and hold accordingly that the present suit being a suit for account is not a suit for recovery of debt within the meaning of section 4 of the Succession Certificate Act.

Appeal dismissed.

32 C. 422.

[422] APPELLATE CIVIL.

Before Mr. Justice Rampini and Mr. Justice Brett.

CHHEDI v. CHHEDAN.*

[13th January, 1905.]

Right of suit—Bengal Tenancy Act (VIII of 1885), ss. 69, 70 (5)—Order of Collector finality of.

Section 70 (5) of the Bengal Tenancy Act does not bar a suit by a tenant against a third party for recovery of crops awarded to the latter by the Collector.

Jaga Singh v. Chooa Singh (4) referred to.

* Appeals from Appellate Decrees, Nos. 2444 of 1901 and 134 to 142, of 1902, against the decrees of Gopi Nath Matty, Subordinate Judge of Patna, dated Aug. 30, 1901, reversing the decree of Narendra Krishna Dutt, Munsif of that district, dated Nov. 29, 1900.

(1) (1898) I. L. R. 23 Mad. 139.

(note).

(2) (1855) 11 Exch. 73.

(4) (1895) I. L. R. 22 Cal. 430.

(3) (1892) I. L. R. 22 Mad. 144.