

Hyder Ali Vs. Elahee Bux Maloom and ors.

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Court : Kolkata

Decided On : Apr-21-1882

Reported in : (1882)ILR8Cal1011

Judge : White and ;Macpherson, JJ.

Appellant : Hyder Ali

Respondent : Elahee Bux Maloom and ors.

Judgement :

White, J.

1. This is an appeal against a decision of the Subordinate Judge of Chittagong, allowing an appeal against a decree of the Munsif. The appeal was allowed on a preliminary ground, that ground being that, under Section 265 of the Contract Act, the suit ought to have been brought in the Court of the District Judge, and not in the Court of the Munsif. A proviso to that section directs that where a partnership is determined, and a suit is brought to wind up the business of the firm, the Court in which the suit is to be brought shall be the Court of the District Judge. This provision, which relates to the forum in which partnership suits of the above description are to be tried, has nothing whatever to do with the subject-matter of the rest of the Code in which it is found, but was probably introduced with a view to secure, as far as possible, that such partnership suits should be properly tried.

2. Some Division Benches of this Court are said to have differed as to the construction to be put upon this proviso,—one of them holding that it is compulsory to bring such a suit in the Court of the District Judge, another of them holding that it is optional. It appears to us unnecessary to consider whether that difference of opinion really exists, and if it does, to which opinion we should incline; because an examination of the subject-matter of this suit shows that the suit is not one relating to partnership between the plaintiff and the defendants, but to a 'co-ownership which exists between them in respect of a ship. The plaintiff calls himself a partner, but is really a part-owner of a river brig, which has been sold; and he sues the first defendant, who owns half the brig, and is the managing owner of the brig, a brig's husband as he is called in nautical language, for his share of the price of the brig, and of the net profits earned by the brig, before it was sold, and he has made the remaining part-owners parties defendants. There is no doubt that, to ascertain accurately what is due to the plaintiff, involves an account very much of the nature of a partnership account; but still the relation between the parties is not that of partners. There is a distinction between co-ownership and co-partnership, and that distinction prevails in a marked degree in the case of ships, which, as Lindley, J., says in his work on Partnership, 'are by far the most important chattels usually owned in common.' The Contract Act also

recognizes this distinction, for in Section 239 of the Act, which defines partnership, there is an illustration (e) in these words,--A and B are joint owners of a ship. This circumstance does not make them partners. 'Cases may sometimes occur in which, a partnership exists between persons owning a ship, and the ship may be part of the assets of the firm; but in such a case some contract of partnership exists between the parties, or some joint business is carried on by them to which owning of ships is merely accessory. The present case is simply one of joint-ownership in a river brig, and the right which the plaintiff has to a share of the net price for which the brig was sold and of its net earnings before it was sold, arises from his interest as part-owner and not by reason of any partnership subsisting between him and the defendants. For these reasons we are of opinion that the Subordinate Judge has misapplied Section 265 of the Contract Act, and that the Munsif had jurisdiction to try the suit. As the Subordinate Judge dismissed the appeal on a preliminary point, it will be necessary to remand the case.

3. We accordingly set aside his decree and remand the appeal to his Court, with directions to try the appeal upon the merits.

4. The costs of this appeal will abide the event of the remand.

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