

## **L. Nawal Kishore vs Rameshwar Nath And Ors. on 24 February, 1955**

**Equivalent citations: AIR1955ALL594, AIR 1955 ALLAHABAD 594**

### **JUDGMENT**

Agarwala, J.

1. This is a defendant's appeal arising out of a suit for recovery of damages for wrongful attachment of property. The facts, briefly stated, are as follows:

2. Two persons, Khawja Baksh and Riaz Uddin, were adjudged insolvents on the application off the appellant Nawal Kishore. In the insolvency proceedings certain property, was attached by the Official Receiver as belonging to the insolvents. This property consisted of a big building in which was housed a printing press and which contained nineteen shops. Eleven of the shops and the hall housing the printing machines had been purchased by Bishambar Nath Khazanchi, the original plaintiff in the suit, prior to the insolvency proceedings.

Bishambar Nath Khazanehi objected to the attachment and sent a notice to the Official Receiver to release the property. As the property was not released he filed a suit for the declaration of his title on 11-4-1935. The property was, however, released during the pendency of the suit pn 10-11-1936. The plaintiff got the plaint amended, and the suit after the amendment was for damages on two counts, Rs. 2000/- for damages to the building and Rs. 1884/14/- at the rate of Rs. 333/5/4 per month for loss of income from the building which the plaintiff suffered on account of its being in possession of the Official Receiver. He also claimed 'pendente lite' and future mesne profits at the same rate.

The trial Court dismissed the whole suit. The lower appellate Court maintained the decree of dismissal against Nawal Kishore but decreed the suit against the Official Receiver for a sum of Rs. 812/8/-. The Official Receiver appealed to this Court against the decree passed by the lower appellate Court, and the plaintiff also appealed to this Court both as against Nawal Kishore and the Official Receiver. The appeal filed by the Official Receiver abated while it was pending in this Court because Bishambar Nath Khazanehi died during that time and his heirs were not brought on the record within time.

In the appeal brought by the plaintiff his heirs were brought on the record and so that appeal proceeded and it was held by this Court, that Nawal Kishore was equally liable along with the Official Receiver and the dismissal of the suit against him was set aside and the case was remanded to the Court below for passing a decree for damages. As against the Official Receiver however it was held that the limitation for a suit against him had expired before the suit had been brought in the Court below. No relief, however, could be given to the Official Receiver because his own appeal had

abated and the decree of the Court below passed against him, therefore, became final.

3. On remand the lower appellate Court held that Nawal Kishore was liable to pay a sum of Rs. 1,900/- on account of the damage caused to the building, and to damages for loss of income from 21-10-1934 to 10-11-1936 at the rate of Rs. 333/5/4 per month.

4. Three points have been urged on behalf of the appellant by Dr. Asthana. The first point urged is that it was not open to the Court below to pass a decree against Nawal Kishore for an amount in excess of Rs. 812/8/- for which a decree had been passed against the Official Receiver. This argument was based upon Section 6 (1) (b) of an English Act entitled (Married Women and Tort-feasors) Act, 1930 (25 and 26 Geo. V, C. 30). The common law of contribution between joint tort-feasors was amended by that Act in England. Section 6 (1) (b) is to the following effect:

"(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the Court is of opinion that there was reasonable ground for bringing the action;"

This Section has been relied upon by Clerk and Lindsell in their book on Torts, Edn. 10, at p. 101 where the learned authors say:

"Although it is possible to bring separate actions against the joint tort-feasors by virtue of this provision and therefore to recover separate judgments, the sums recoverable under those judgments by way of damages are not in the aggregate to exceed the amount of the damages awarded by the judgment first given;"

5. Clause (b) of Section 6 (1) in express terms refers to more than one action and provides that in the second and subsequent actions taken together not more than the amount decreed in the first action shall be decreed. We are not concerned with more than one action because in the present case there was only one action against the two defendants. The Section, therefore, would not apply to a case of the present nature. Moreover, there is no statutory law of torts in this country and the Act aforesaid is not applicable here.

The Courts of this country act on the principle of equity, justice and good conscience in matters which are not covered by statute and rely upon the principles established under the English law to find out what the Rule of justice, equity and good conscience is. Any technical Rule or statutory law of England is not, as such, considered to be based on the principle of equity, justice or good conscience, unless it appears to be so to the judge deciding the case.

It appears to us that the Rule of law indicated in Clause 6 (I) (b) of the Act mentioned above is not necessarily based on any principle of equity, justice or good conscience. There is no justifiable reason why in the subsequent suit, if more than one suit is brought for damages against different persons, the plaintiff should be restricted to the amount decreed against the joint tort-feasor in his suit against the other joint tort-feasors against whom the cause of action is not only joint but joint and several.

However that may be, as stated by us above, in the present case there was one suit against both the joint tort-feasors. The decree against the Official Receiver may not have been passed at all because of the bar of limitation. That would have been no reason why no decree could be passed against the other defendant against whom the period of limitation was different.

Similarly there is no reason why if the Official Receiver because of his official position was considered to be liable to some extent, the other defendant who did not occupy that position, should be deemed to be liable only to that extent and not to the whole extent to which he would otherwise be liable. This plea, it may be noted further, was not taken on behalf, of the appellant in the Court below. For all these reasons we think that this contention of learned counsel is not sound.

6. The second contention raised is that Nawal Kishore could not be held responsible for the damage caused to the building on account of the negligence of the Official Receiver. The amount of Rs. 1,900/- decreed on account of the damage caused to the building was said to be due to the fact that after attachment no care, was taken to have the building kept in proper repair. It was alleged that this was the fault of the Official Receiver and not the fault of Nawal Kishore.

In our opinion this contention is also not sound because the property was attached at the instance of Nawal Kishore and it remained locked up as the Receiver could not let out a major portion of it to anyone in spite of his efforts in that direction. The damage caused to the building was the direct consequence of the attachment and its being locked up. Nawal Kishore, who got the property attached and locked up, 'must be held responsible for the consequences which arose out of his own action, in the judgment delivered by the Bench of this Court in this very case on the previous occasion it was clearly held that Nawal Kishore was responsible for the consequences of his act.

It was observed that Nawal Kishore, who was responsible for the attachment, was liable for the damages claimed, and reference was made to several decisions, namely -- 'Abdur Rahim v. Sital Prasad', AIR 1919 All 70 (A); -- 'Binda Pershad v. Ramchander', AIR 1921 All 89 (B); -- 'Ramanathan Chetty v. Mira Sailo Marikar', AIR 1931 PC 28 (C); and, -- 'Manak Lal Nihal Chand v. Hamid Ali', 1944 All LJ 273 (D).

7. The last contention is that the amount of damages determined by the Court below is too high. We think that this contention is not open to the appellant because even if the assessment is wrong it is a pure question of fact and the decision of the Court below cannot be interfered with in second appeal.

8. We, therefore, find no force in this appeal and dismiss it with costs.