

Allahabad High Court

Kanji Mall vs Durga Prasad And Ors. on 13 March, 1925

Equivalent citations: AIR 1925 All 555

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JUDGMENT Piggott, J.

1. This was a suit for profits, and accounts had to be adjusted as between three distinct parties, namely, the plaintiff, Kanji Mai, the third defendant, Durga Prasad, and the other two defendants, Jugal Kishor and Ram Chandra, in respect of whom a joint account was required to be taken. The case underwent various vicissitudes; but in the end a learned Judge of this Court on the basis of express findings of fact, returned upon issues remitted for the purpose, arrived at the conclusion that Kanji Mai, the plaintiff was, on a fair settlement of accounts, entitled to recover Rs. 242-7-6 in all from the other co-sharers. He also found that Durga Prasad was in debt to the other co-sharers by reason of realizations which he had made in excess of his rateable share, to the amount of Rs. 202-14-11. On these facts the learned Judge rightly held that there ought to be a decree in favour of Kanji Mai against Durga Prasad alone for a sum of Rs. 202-14-11. It was found that there had been a settlement as between Kanji Mai and other two defendants, so that it was not necessary to go further into the question of their respective rights or liabilities the learned Judge, however, held that, because no decree had been passed against Durga Prasad and the plaintiff had never appealed against the decree which dismissed his claim as against Durga Prasad, no decree could be given in favour of Kanji Mai on the second appeal which had been filed by Jugal Kishore and Ram Chandra. The matter has been brought before us in an appeal under the Letters Patent in which all the defendants to the suit as brought are impleaded. the plaintiff Kanji Mai relies on the provisions of Order 41, Rule 33 of the Code of Civil Procedure, and contends that there ought to have been a decree in his favour against Durga Prasad for Rs. 202-14-11. Reliance is also placed on the case of Neelamani Patnaik Mussadi v. Sukaduva Beharu (1921) 43 Mad. 803 as authority for the proposition that the provisions of Order 41, Rule 33 of the Civil Procedure Code can be applied so as to give appropriate relief to a plaintiff who appeared before the appellate Court as a respondent under circumstances closely analogous to those now before us. In our opinion this contention is well founded. We modify the decree of the learned judge of this Court and instead of dismissing the plaintiff's claim altogether, we grant him a decree for Rs. 202-14-11 against the defendant Durga Prasad alone.

2. The costs as between these two parties which will include fees on the higher scale in respect of both hearings in this Court, will be adjusted on the basis of payment and receipt in proportion to failure and success calculated on the total amount originally claimed.