BOMBAY HIGH COURT

Popat Virji

Vs

Damodar Jairam

(Kania, J.)

28.08.1933

JUDGMENT

Kania, J.

1. This is a suit on a foreign judgment.

2. Several years ago one Damodar Jairam started doing business at Zanzibar. On his death his son Keshavji carried on the business in the same name. When Keshavji died in 1901, he left behind him that business at Zanzibar and several immoveable properties at Zanzibar, Bombay and Cutch. His widow Zaverbai obtained letters of administration at Zanzibar and at Bombay in 1903, and continued the business at Zanzibar. Keshavji left no issue.

3. Zaverbai resided ordinarily in Bombay and carried on the business at Zanzibar through managers whom she gave powers-of-attorney. In 1912, her brother Mulji Mathuradas was appointed the manager of the business and held a general power-of-attorney from her. In 1918, Mulji, on behalf of the firm of Damodar Jairam, entered into different partnerships with the plaintiff, Jumma Cassum and others. The business done by the firm of Damodar Jairam and the plaintiff in partnership was also done in the name of Damodar Jairam. The business was to purchase and sell piece-goods. In August, 1918, Mulji, on behalf of the firm of Damodar Jairam, passed a promissory note in favour of Cassum Juma & Co. for Rs. 15,625. Cassum Juma & Co. endorsed over that note to the plaintiff, who in his turn endorsed it over to the Standard Bank of South Africa at Zanzibar. When the note was presented to the firm of Damodar Jairam for payment, the manager of the firm, i.e. Mulji, gave a cheque upon the Standard Bank of South Africa for the amount of the note but that cheque was dishonoured. The note was, therefore, returned by the bank to the plaintiff. In May, 1919, Mulji was replaced by Devji Lalji as the manager of the business of Damodar Jairam at Zanzibar. The second defendant (Haridas Keshavji) was adopted to the deceased Keshavji by Zaverbai in about October, 1919. As such adopted son he became the owner of the properties of Keshavji including the said business at

Zanzibar. The plaintiff filed suit No. 2870 of 1921 in the Court at Zanzibar to recover the amount due under the promissory note as the holder in due course. To that suit he had made the firm of Damodar Jairam, the second defendant: (Haridas Keshavji, the adopted son), and the partners of the firm of Cassum Juma & Co., party defendants. On behalf of the firm of Damodar Jairam, Zaverbai was served with the summons and she filed a written statement through Devji Lalji. In that written statement she stated that she had carried on the business in the name of Damodar Jairam till lately, but Mulji had no authority to trade in partnership or pass the promissory note. When that suit was filed, Chhabildas, the natural father of the second defendant (Haridas), was appointed a guardian ad litem of the second defendant, and as such guardian he filed his written statement (exhibit 3). In that written statement it was contended on behalf of the minor second defendant that Zaverbai was not entitled to carry on business other than that of managing the immpveable properties and Sharaffi and commission agency business on a small scale as was done by Keshavji during his life-time. It was further contended that the managers appointed by Zaverbai had launched into new ventures which were unauthorised and not binding on the firm or the minor. It was further alleged that neither Zaverbai nor Mulji had authority to carry on the business which gave rise to the liability under the promissory note, and it was denied that the debt alleged to be due to the plaintiff was a trade debt of the ancestral Hindu family firm as claimed by the plaintiff.

4. While Mulji was in charge of the business at Zanzibar, it appears that he had opened an account with the Standard Bank of South Africa. That account was largely overdrawn and the bank held certain securities of the firm of Damodar Jairam. The bank filed a suit against the firm and that litigation went on between 1921 and 1928. In that suit Mulji gave evidence on behalf of the firm. That suit was ultimately settled in 1928 by the firm of Damodar Jairam admitting liability for a sum of three laics of rupees.

5. In November, 1928, Mulji Mathuradas was substituted in the place of Chhabildas in the Zanzibar suit and he adopted the same written statement on behalf of the minor. On July 21, 1931, the suit reached hearing, and the Court passed an ex parte decree against the first and second defendants in terms contained in its judgment and decree (exhibits A and B). The present suit is filed on the judgment and decree in that suit. The defendants contest the conclusiveness of that judgment on the grounds contained in the various issues raised on their behalf.

6. I think that the facts and evidence in connection with this suit and the Zanibar suit should be considered in three compartments : (1) as to what transpired in respect of the promissory note on which the claim was made in the Zanzibar Court till the second defendant was adopted ; (2) from the filing of the Zanzibar suit till the date when Mulji Mathuradas was appointed guardian ad litem of the second defendant in that suit; and (3) from that day till the judgment was pronounced

at Zanzibar. I think that events should be considered from this point of view because as regards the first portion the suit was filed at Zanzibar and the rival contentions of the parties were put before the Court there. If the appointment of Mulji as guardian was good, the decision of the Zanzibar Court would be on the merits, and, in my opinion, it is not open to the defendants now to contend in this suit that the claim put forth on behalf of the plaintiff at Zanzibar was not sustainable or that the Zanzibar Court had come to a wrong conclusion in respect of the disputes between the parties. This point is made clear in *Jacobson v. Frachon*[1] That decision shows that, although according to the opinion of the Court in which the suit was filed, on a foreign judgment, the appointment of a particular person as referee was undesirable and the report made by such a referee was "an uncandid production of a biased and prejudiced mind", it was not open to the Court trying the suit on a foreign judgment to decide whether the decision of the foreign Court on the materials put before it was right or not. The duty of the Court was merely to see that the foreign Court had applied its mind to the facts and the law on the point. The accepted proposition of law in this connection, as stated by Lord Coleridge C. J. in *Abouloff v. Oppenheimer*[2], *is* as follows (p. 302):that the courts of this country in dealing with a foreign judgment will not inquire whether the foreign court pronounced a judgment correct in point of law, or right and accurate in point of fact.

7. In the same case Brett L.J. observed as follows (p. 307):it is immaterial to consider whether it (i.e. the judgment of the foreign Court) was erroneous by reason of a wrong appreciation of the evidence or of the law, or by reason of frauds perpetrated on the courts by witnesses other than the plaintiff and her husband: the only manner in which that foreign judgment can be rendered ineffective upon the ground of fraud, is by proving that it was obtained by the fraud of the plaintiff, who now relies upon it.

8. Again in *Pemberton v. Hughes*[3] Lord Lindley M. Rule stated as follows (p. 790):If a judgment is pronounced by a foreign Court Over persons within its jurisdiction and in a matter with which it is competent to deal, English Courts never investigate the propriety of the proceedings in the foreign Court, unless they offend against English views of substantial justice.

9. It is, therefore, not open to the parties to inquire in this suit whether the decision of the Zanzibar Court was mistaken. It would be open only to inquire whether the Court was misled or imposed upon. For these reasons I do not think that, except on the ground that the Court was imposed upon, the facts and evidence leading to the execution of the promissory note on which the Zanzibar suit was based, are relevant to be considered in this suit.

10. I shall first deal with the case of fraud and collusion alleged in the written statement. Apart from the documents exhibited, the defendants have sought to support this contention by calling Mulji Mathuradas to give evidence. Taking the evidence as a whole, I think that the defendants'

attempt to establish a case of fraud and collusion has entirely failed. That ground for challenging the judgment of the Zanzibar Court is, therefore, not available to the defendants.

11. As regards the contention that the decision was not on merits and was against the law in British India, I think that the defendants' contention must fail. After obtaining letters of administration Zaverbai must be considered to have fully administered the estate, within twelve years at the latest, and thereafter her management of the estate was as the heir of Keshavji and not as the administratrix. The evidence does not show that in 1918, when the promissory note on which the Zanzibar suit was filed was executed, anything had remained to be administered in the estate of Keshavji, The statements contained in the pleadings filed in the Zanzibar Court suggest that Zaverbai was doing business on her own account as the heir. In any event the evidence on record does not show that in 1918 Zaverbai was conducting the business in the name of Damodar Jairam as administratrix of the estate of Keshavji. I, therefore, think that the first contention of the defendants in this connection must fail. As regards the right of Zaverbai to do business as an heir, there appears to be no doubt on the point. In 1918, Zaverbai, as the widow, was undoubtedly the heir of Keshavji. The business which was started several years ago in the name of Damodar Jairam was continued in the same name by Keshavji and was further continued by Zaverbai. The only question which can arise would be whether the debts contracted by Zaverbai as such heir would be binding on the estate.

12. In *Sakrabhai v. Maganlal*[4]. it was held that trade debts, properly incurred by a Hindu widow, on the credit of the assets of the business to which she had succeeded as the heir of her husband, are recoverable after her death out of the assets of the business, as against the reversioners who have succeeded thereto; in the absence of a specific charge. Jenkins C. J. reviewed the previous decisions on the point and summarized the result as follows (p. 215):These authorities, then, establish the following propositions: 1st, that in Hindu Law a business is a distinct heritable asset; 2nd, that a manager can contract debts for the purposes of the business, and that even in the absence of a specific charge they are recoverable from the assets of the business; and 3rd, that a widow can, under circumstances, contract a debt for the purpose of a family business to which she has succeeded, and by specific charge make it payable out of assets of the business even as against the reversionary.

13. The learned Chief Justice thereafter observed as follows (p. 215):If a widow can, under appropriate circumstances, execute as security for a debt of this class a mortgage which after her death, will be binding on the reversioners, why cannot the assets of the business in the hands of the reversioners be made liable in the absence of a specific charge? I limit my inquiry to the assets of the business, as that will admittedly suffice for the purposes of the case out of which this reference arises.

14. After considering the decisions of the other High Courts, the full bench came to the conclusion mentioned above. In support of this conclusion strong reliance was placed on the fact that in this presidency a widow could apply the moveable assets of the business as she pleased, during her life-time, and it was, therefore, incongruous to hold that she could not borrow, on the credit of the same assets, so as to make them liable for the debts. The observations of the Privy Council in *Hunoomanpersaud Panday v. Mussummat Babooee Munraj Koonweree*[5] in respect of the power of a manager of a joint Hindu family to borrow money and the binding nature of such debts on the other members of the family have been held to be equally applicable to the case of a widow carrying on the business of her deceased husband, as an heir, after his death.

15. Having regard to these decisions, it is clear that if a widow, as an heir, carries on business which she has inherited as an asset, and in doing that business incurs a proper trade debt, the creditor could recover the money from the assets inherited by the reversioners after the death of the widow. The decision in Sakrabhai v. Maganlal was limited to the assets of the business because, as observed by Jenkins C.]., the necessity for deciding the question whether the creditors could recover the debt from the general assets inherited by the reversioners did not arise in that case as the assets of the business were sufficient to satisfy the particular debt. In principle, however, I do not find any distinction between the trade assets inherited by the reversioners and the other assets inherited by them on the death of the widow. The power of the widow in this presidency to deal with the moveable property is not limited to any particular moveable property and, therefore, in my opinion, that decision lays down the general proposition as I have mentioned above. In the present case, on the adoption of the second defendant, the widow would cease to be the heir of the deceased, and in such circumstances I do not see any reason why the observations of the Privy Council in Hunoomanpersaud Panday v. Mussummat Babooee Munraj Koonweree should not be applied.

16. The only question which then remains to be considered is, whether Zaverbai, while conducting the business, had the authority to pass the promissory note on which the Zanzibar suit was filed. In this connection the decision in *Raghunathji Tarachand v. The Bank of Bombay*[6] is useful. Chandavarkar J., who was a party to the full bench decision is Sakrabhai v. Maganlal, in delivering the judgment in that case, held that where a family carried on business, the member who managed it, for the family, had an implied authority to contract debts for its purposes, and the creditor was not bound to inquire into the purpose of the debt in order to bind the whole family thereby, because that power was necessary for the very existence of the family. In that case the Court had to consider whether a hundi passed by the manager of the family, which carried on the joint family business, was binding on the members of the joint family. The hundis were signed by the manager in the name of the firm. Having regard to the series of authorities which applied the same principles to the debts incurred by the manager of a joint family and a

widow, I think, that if a widow, as the heir of her deceased husband, carries on his business and for the purposes of the business incurs a trade debt, which, might assume the shape of passing a promissory note or a hundi, the reversioners would be bound to pay the debt out of the assets inherited by them. This appears to be the law in British India. When the Zanzibar suit was heard by that Court, the plaintiff gave evidence and deposed that the business was ancestral and was carried on by Zaverbai through Mulji and the note was properly passed as a trade debt. On a consideration of the evidence led before the Court, judgment was pronounced against the defendants. Under the circumstances, I am unable to hold that the Zanzibar Court had failed to recognise the law in British India or that its judgment is against the law in British India.

17. The principal ground on which the defendants contest their liability is that the second defendant was not represented in the Zanzibar Court at all, although on the record Mulji was the guardian ad litem of the second defendant in that suit. It is urged that the Court should never have appointed Mulji as the guardian under the circumstances of the case, as the interest of Mulji was adverse to the interest of the minor. In the alternative it is urged that the Court failed to observe the rules of natural justice in appointing Mulji as the guardian ad litem of the second defendant and failed to observe the procedure prescribed in that respect in the Code of Civil Procedure. As the present suit is filed on the judgment of the Zanzibar Court, the onus is on the defendants to prove the various allegations made by them in this connection.

18. Where the defendant is a minor, it is the duty of the Court not only to appoint a guardian, but to satisfy itself that the proposed guardian was a fit and proper person to represent the minor in the suit, to put in a proper defence, and generally to act in the interest of the minor : *Ram Chandra Das v. Joti Prasad*[7] In this connection strong reliance is put on behalf of the plaintiff on the decision in *Mussammat Bibi Walian v. Ranke Behari Pershad Singh*[8]. In that suit one T in 1873 executed a mortgage in favour of C to secure a sum of money. In 1881, Z, the son of C, brought a suit to recover the money due under the mortgage. T being then dead, G, his major son, and M, as mother and guardian of the four minor sons, were made defendants. In October, 1881, C obtained an ex parte decree under which the mortgaged properties were put up for sale and ultimately purchased by the decree-holder, who was put in possession in January, 1883. In 1895, three of the younger sons of T, who were described as minors in the first suit, filed another suit against the representatives of the original plaintiff. In that suit they alleged that T had borrowed money for immoral purposes and the decree was obtained fraudulently by T in collusion with the adult son of C and that the proceedings in execution and sale were equally fraudulent. It was further alleged that in the first suit no guardian ad litem was duly appointed for the plaintiffs in the second suit. It was prayed, inter alia, that the auction sale, so far as the plaintiffs were concerned, be declared to have been held in an illegal way and the plaintiffs be put in possession of the property. The defendants denied the allegations of the plaintiffs!, and one

of the issues was, whether the plaintiffs were properly represented in the first suit and execution proceedings, and, if not, whether they were void on that ground. It was found as a fact that the plaintiffs' mother had appeared throughout the proceedings in the first suit as their guardian. It was also found that no order appointing the mother as guardian was drawn up. On an examination of the proceedings, however, it was found that the Court admitted the plaint in which the mother was described as a guardian and she was so described in the decree and also in the application for execution. The Subordinate Judge who tried the second suit held that, although no formal order appointing the mother as guardian was drawn up, the Court must be deemed to have sanctioned the appointment and the want of the formal order was at most an irregularity which could not invalidate the proceedings in the absence of proof of prejudice to the plaintiffs. On appeal, the High Court held that it was necessary that the Court should see that a proper guardian was appointed to protect the interests of the minors. Section 443 of the Code of 1882 {corresponding to Order XXXII, Rule 3) was imperative upon this point; the Court, after satisfying itself on the fact of the minority, was bound to appoint a proper person to act on behalf of the minors in the conduct of the case. These observations were approved by the Privy Council. Their Lordships emphasized that the Courts should strictly follow the rules contained in the sections as to the appointment of guardian ad litem. "The High Court considered that the absence of the order, appointing the mother as guardian, was fatal and they reversed the decision of the trial Court. Their Lordships of the Privy Council did not agree with that conclusion. They observed that the defects of procedure alleged in that case were at the most irregularities and would not have furnished grounds for reversing the decree, in the former suit, if they had been raised upon appeal in that suit. Having regard to the fact that the minors' interest was in fact continuously safeguarded by the mother, the absence of an order was not considered fatal. Again in *Munnu Lal v. Ghulam Abbas*[9] it was pointed out that no affidavit, as required by Section 456 of the Code of 1882 (corresponding to Order XXXII, Rule 3(3), of the Code of 1908), was filed. It did not appear whether in fact there was an affidavit or not, but assuming that there was no such affidavit, their Lordships thought it impossible to hold that the infants were not properly represented. The learned trial Judge had appointed a guardian ad litem, the order was on record, and their Lordships held that it must be presumed, in the absence of evidence to the contrary, that everything was regularly and properly done.

19. Relying on these decisions, it is contended by the plaintiff in this suit, that, unless the evidence led on behalf of the defendants shows otherwise, the Court must presume that the Zanzibar Court had done everything regularly and properly in connection with the representation of the second defendant in the Zanzibar suit. I do not think this proposition can be disputed. The question, therefore, is, whether, on the documents and evidence, the defendants had succeeded in showing that the minor was not represented in the Zanzibar suit. As observed in the full bench

decision of *Venkatasomeswara Rao v. Lakshmanaswami*[10] when a person has executed a document or entered into a transaction on behalf of a minor, the question, whether that person can be validly appointed a guardian, in a suit brought against the minor on the document or transaction in question, is not a pure question of law but is one of fact, and for the decision thereof no hard and fast rule of law could be laid down. It was held that there was nothing either in the Civil Procedure Code or in the authorities to lay down that such a person could not be appointed a guardian and under proper circumstances he can be validly appointed a guardian of the minor in such a suit. I respectfully agree with that decision. In cases, where, for instance, a document executed by a person on behalf of a minor was alleged to be a forgery or was alleged to have been obtained from that person by coercion or undue influence, in the absence of any other conflict of interest, the person executing the document would be the best person to represent the minor as guardian in a suit filed on the document against the minor. It is, however, clear that this rule cannot apply under all circumstances. This is only an illustration of a case showing the circumstances under which the same person may be a proper person to act as such guardian.

20. Having regard to these authorities, I shall examine the facts as they existed when Mulji was appointed guardian in the Zanzibar suit. [After discussing the facts his Lordship proceeded:] Having regard to these steps taken by Mulji before and after his appointment, I am unable to hold that Mulji was either a fit and proper person to be appointed guardian in the Zanzibar suit or after his appointment he represented the minor in the Zanzibar suit.

21. In this connection the decision in *Rashid-un-nisa v. Muhammad Ismail Khan*[11] is helpful. In that case a suit was filed by the minor for a declaration. that two decrees and three sales in execution, affecting her share in her father's estate, were invalid as she was not properly represented in those proceedings. It was found that the minor's married sister was appointed her guardian ad litem in one of the proceedings, while in the other two the person who was really the plaintiff; was appointed her guardian. Under the Code of 1882, a married woman was not qualified to be appointed a guardian and, therefore, in the first proceeding it was held that the minor was not represented at all. In the other two proceedings it was considered that the minor was never a party, in the proper sense of the term, to the suit in which the decrees were passed and the decrees were, therefore, of no effect. The position of Mulji in the present case, having regard to the allegations contained in the written statement of the minor, appears to be very near the position of the person who represented the minor in that case. This point again came to be considered recently by the Calcutta High Court in *Shaik Abdul Karim v. Thakurdas Thakur*[12] In that suit the defendants were described as A, widow of B, and C, a minor, by his mother and certificated guardian, the said first defendant A. There was no appointment of the guardian ad litem for the minor. The evidence showed that the Court passed an ex parte decree as the

defendants did not appear. In delivering the judgment Rankin C.J. reviewed all the authorities. He found that the defendants' pleader had gone to the house where the defendants lived but did not succeed in having any conversation with the mother. The minor told him on behalf of the mother that the claim was true, that they had had the money and they really could not dispute the debt. Even after considering those instructions as having been given by the mother, it was held that the decree was not binding on the minor, because in law the minor was not represented in the suit. It was further held that it was necessary to strictly observe the provisions contained in Order XXXII in connection with the appointment of a guardian ad litem.

22. Having regard to the decisions mentioned above, and having regard to the facts which are clear from the documents, I have no doubt that the minor's interest was in conflict with the interest of Mulji in the Zanzibar suit, and Mulji was not a fit person to be appointed a guardian. The documents do not show that in appointing Mulji as a trustee of the minor in the Zanzibar suit the Court had followed the rules and procedure prescribed in Order XXXII or the rules of natural justice. I am, therefore, unable to hold that the minor was properly represented in the suit in the Zanzibar Court. Having regard to the attitude adopted by Mulji, I think the appointment has been prejudicial to the defence of the minor in the Zanzibar suit. I, therefore, think that the decree passed in the Zanzibar suit against the minor is not binding on the minor and does not avail the plaintiff.

23. In the Zanzibar suit the present third defendant was not a party. Inasmuch as the present suit is filed on the judgment of the Zanzibar Court, this suit against the third defendant must, therefore, fail.

24. Having regard to the judgment which I have just delivered, the suit against the second defendant must also fail. On behalf of the plaintiff it is urged that, although by reason of that judgment the second defendant may not be considered as represented in the Zanzibar suit, and, therefore, the judgment in the Zanzibar suit may not be treated as conclusive according to Section 13, the plaintiff is still entitled to go into the merits of the case and now prove his claim against the second defendant. In this connection no authority is cited on behalf of the plaintiff. On the other hand, I find in Halsbury's Laws of England, Vol. VI, (2nd Edn.), at p. 525, the following passage:

Since the foreign judgment constitutes a simple contract debt only there is no merger of the original cause of action and it is therefore open to the plaintiff to sue either on the foreign judgment or on the original cause of action on which it is based unless the foreign judgment has been satisfied.

25. In *Grant v. Easton*[13] it was held that the plaintiff might sue in England upon the original

cause of action, if actionable there, or upon the judgment of the foreign Court or upon both, and such debt might be a subject of a special endorsement. The plaintiff has not filed the suit on the original cause of action as is obvious from the plaint. He has sued on the foreign judgment alone. As, in my opinion, the foreign judgment was pronounced without the second defendant being represented in the Zanzibar Court, there is no cause of action on the foreign judgment against the second defendant, the suit against the second defendant must fail.

26. It is urged on behalf of the plaintiff that inasmuch as the Zanzibar Court had passed a decree against the firm of Damodar Jairam, which firm was also the first defendant in the Zanzibar suit, the decree against the firm must hold good. It is pointed out that the summons in the Zanzibar suit was served on Zaverbai and also on Haridas the minor. If such service was proper, the firm, as such, was served, and if, therefore, the firm failed to appear at the hearing, the decree should not be set aside as against the firm. I am unable to accept this argument. The judgment of the Zanzibar Court is for the sum mentioned in the decree to be recovered out of the family estate of Damodar Jairam in the hands of Haridas Keshavji Damodar. In the plaint in the Zanzibar suit the plaintiff alleged that Haridas, as the adopted son of Keshavji, had inherited the estate of Keshavji including the said business of which and of the said estate he had taken possession. It is, therefore, clear that the plaintiff was aware that at the date of the suit Haridas was the sole representative of the firm and was in the sole possession of the business and assets of the firm. If Haridas was not properly represented in the Zanzibar suit, no decree against the assets of the firm in his hands or against him as representing the firm would be conclusive under Section 13 of the Code. The fact: that the summons in the Zanzibar suit was served on Zaverbai on behalf of the first defendant firm does not avail the plaintiff because, having regard to para. 10 of the plaint in the Zanzibar suit, the plaintiff was aware that the business was transferred to Haridas. If, therefore, it was sought: to make Haridas or the assets in his hands liable, it was incumbent on the plaintiff to serve the summons on Haridas, and, having regard to the fact that he was a minor, to see that he was properly represented. As that was not done it is obvious that in so far as Haridas was connected with the firm or the assets of the firm the decree cannot bind those assets. The effect of accepting the plaintiffs' contention would be in fact to nullify the judgment just delivered by me. According to the plaintiff, although the decree against the second defendant would not be available, the decree against the firm of Damodar Jairam must hold good. Therefore, the plaintiff would, if that contention was upheld, get a decree against the firm of Damodar Jairam in this suit and execute it against the assets of that firm, including the assets in the hands of the minor. I do not think that such a construction could or should be put on the judgment of the Zanzibar Court if Haridas was not represented in the Zanzibar suit at all. It is significant that no decree is passed against Zaverbai in the Zanzibar suit. It is also clear that no decree is passed against the assets of the firm in the hands of Zaverbai. The effect of the Zanzibar

decree, therefore, could only be that the assets in the hands of the minor should be utilised in payment of the decree of the Zanzibar Court. If the minor had no opportunity to defend the action in which such a decree was passed, that decree could not be held binding on the minor and, therefore, the plaintiff's contention must fail. The result is that the suit will be dismissed.

27. The defendants in their written statement had formulated grave charges of fraud and collusion which they have entirely failed to substantiate. Their contention that the judgment of the Zanzibar Court was pronounced against the law of British India has also failed. The whole of the oral evidence led on behalf of the defendants has not been helpful at: all in establishing the charges made by the defendants. Under the circumstances, I think that the fair order for costs would be that the plaintiff should pay the defendants half the costs of the suit.

Cases Referred.

1(1927) 44 T.L.R. 103
2(1882) 10 Q.B.D. 295
3[1899] 1 Ch. 781 '
4(1901) I.L.R 26Bom. 206 : S.C. 3 Bom. L.R. 738 F.B
5(1856) 6 M.I.A. 393
6(1909) I.L.R 34 Bom. 72 : S.C. 11 Bom. L.R. 255
7(1907) I.L.R 29 All. 675
8(1903) L.R. 30 I.A. 182 : S.C. 5 Bom. L.R. 822
9(1910) L.R. 37 I.A. 77 : 12 Bom. L.R. 439
10(1928) I.L.R 52 Mad. 275 F.B
11(1909) L.R. 36 I.A. 168 : S.C. 11 Bom. L.R. 1225
12(1928) I.L.R 55 Cal. 1241
13(1883) 13 Q.B.D. 302