

the entire year except its first day. Parliament could not have possibly intended to favour the affluent assesses who are able to employ their own capital and to discriminate against the indigent who have to borrow funds to finance their undertaking.

(11) The learned counsel for the respondents made reference to *Commissioner of Income-Tax, A.P. v. Warner Hindustan Ltd.* (3); and *Karimtharuvi Tea Estates Ltd. and another v. State of Kerala and others* (4). Suffice it to say that both the cases are distinguishable and the learned counsel cannot derive any benefit therefrom.

(12) No other argument has been raised in the other case.

(13) For the aforesaid reasons, I accept the writ petitions, declare rule 19-A (3) *ultra vires* section 80J of the Income Tax Act, quash the impugned orders of the Commissioner and direct him to allow the deductions to the petitioners taking into consideration the observations made above. No order as to costs.

H. S. B.

Before J. V. Gupta, J.

RAMEL DASS,—Appellant

versus

DHARAM SINGH and others,—Respondents.

Regular Second Appeal No. 2909 of 1979.

May 9, 1980.

*Code of Civil Procedure (V of 1908)—Section 100—Two separate second appeals filed against one judgment by persons having common interest and defence—One appeal dismissed in limine by the High Court—Second of such appeals—Whether also liable to be dismissed on this short ground.*

(3) (1979) 117 I.T.R. 68.

(4) (1963) 48 I.T.R. 83.

Ramel Dass v. Dharam Singh and others (J. V. Gupta, J.)

*Held*, that where the persons filing two second appeals in the High Court under Section 100 of the Code of Civil Procedure 1908 are persons having common interest and common defence then if one appeal filed by some of them has already been dismissed by the High Court then the second appeal filed by the others is liable to be dismissed on that short ground alone.

(Para 3).

*Regular Second Appeal from the order of the Court of Shri. Prithipal Singh Grewal, Additional District Judge, Patiala (I), dated 18th August, 1979 reversing that of Shri W. S. Lekh P.C.S., Sub-Judge 1st Class, Rajpura, dated 2nd March, 1978 decreeing the suit of the plaintiffs with costs.*

G. R. Majithia, Advocate, for the Appellant.

Shri Munishwar Puri, Advocate, for the Respondent.

#### ORDER

(1) This Regular Second Appeal arises out of a suit for declaration to the effect that the transfer of suit land by defendant No. 1 Budhu Ram in favour of defendants Nos. 2 and 3, i.e., Dhannu Ram and Ramel Dass, sons of Jumma Ram, through collusive and consent decrees, dated 31st August, 1970 is illegal, ineffective, null and void, as the same has been made to defraud his creditors and the same is also not binding on the plaintiff. The trial Court decreed the suit partially but on appeal the learned Additional District Judge reversed the judgment and decree of the trial court on issue No. 4 also and decreed 'the plaintiff's suit in entirety'. In this appeal filed by Ramel Dass, one of the defts, notice of motion was issued on 17th March, 1980. The learned counsel for the plaintiff Dharam Singh, has brought to my notice that R.S.A. No. 2664 of 1979, against this very judgment filed by the other brother Dhannu Ram has already been dismissed on 2nd November, 1979, whereas the present appeal has been filed on 19th November, 1979 by Ramel Dass, the other brother, after the dismissal of that R.S.A. Consequently, it was contended that in view of the dismissal of the earlier R.S.A. against this very judgment, this appeal is liable to be dismissed on this ground alone.

(2) The learned counsel for the appellant, contended that though an appeal against this very judgment has been dismissed on 2nd November, 1979, by this Court, but that itself is no ground to

dismiss the present appeal. In support of his contention, he relied upon a judgment in *Ishar Dutt and another v. Mussi Dube and others* (1), I have gone through the said judgment, but it has no application to the facts of the present case. In that case, two separate appeals were filed by the two sets of defendants. The appeal filed by one set of defendants was dismissed by the Additional District Judge; whereas the appeal filed by the other set of defendants was accepted, and, consequently, the suit of the plaintiffs against all the defendants was dismissed.

(3) In the present case, Dhannu Ram and Ramel Dass are real brothers and their interest in the suit is common. Both of them had engaged one counsel before the lower appellate Court and they had filed a joint written statement in the trial Court. Under these circumstances, if the appeal filed by one of them has already been dismissed by this Court, then the second appeal on the same grounds is liable to be dismissed on that short ground alone. Dismissed.

H. S. B.

Before M. M. Punchhi, J.

SURINDER KAUR,—Appellant

versus

MADAN GOPAL SINGH,—Respondent.

F.A.O. No. 188-M of 1979.

May 12, 1980.

*Hindu Marriage Act (XXV of 1955)—Section 27—Principles underlying therein—The word 'belong' occurring in section 27—Scope of—Stated.*

Held, that a reading of section 27 of the Hindu Marriage Act, 1955 shows that analytically the section pours out the following principles (1) there must be a matrimonial proceeding pending under the Act before the Court and an application for disposal of property must be made before the decision of the proceeding; (ii) it is not incumbent on the court to make provision in the decree with regard to disposal of property and it is left to its judicial discretion; (iii) the provision

(1) AIR 1915 Allahabad 367.