

Bharta Vs. Chet Ram

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Court : Allahabad

Decided On : Dec-22-1933

Reported in : AIR1934All427; 150Ind.Cas.105

Appellant : Bharta

Respondent : Chet Ram

Judgement :

Sulaiman, C.J.

1. This is an application in revision by the defendant from a decree of the Court of Small Causes. The plaintiff's case was that he as lambardar was entitled to recover water rates from tenants but the defendant wrongfully realized some rates from some of the tenants; that when the plaintiff claimed the amount from the tenants, they pleaded payment to the defendant, in consequence of which his suit was dismissed by the Revenue Court. Accordingly the plaintiff claimed that as lambardar he is entitled to recover the amount from the defendant through the Civil Court. The defendant did not deny the fact that he had realised the sum claimed, but pleaded a set-off on account of a payment made by him on account of default in the payment of Government revenue by the plaintiff. It appears that both the plaintiff and the defendant are lambardars but it is admitted that the plaintiff alone was entitled to recover the water rates claimed in the suit, while he was liable to deposit the Government revenue which had been paid by the defendant on account of the plaintiff's default. The defendant claimed that Rs. 133-10-9 was the

amount paid by him towards the revenue, but he merely asked for a set-off as against the plaintiff's claim without claiming a decree for the balance, that is to say, without any counter-claim.

2. The Court below held that the defendant's claim for a set-off was barred by time because, on the date when he filed the written statement, his remedy would have been barred by the law of limitation. It is admitted that his remedy would have been so barred on the date when the written statement was filed. The first point for consideration in revision is whether the Court was right in disallowing the claim for a set-off.

3. No doubt in England a clear distinction has been drawn between a set-off which merely amounts to an adjustment or satisfaction of the plaintiff's claim and a counter-claim under which a defendant claims a decree for the surplus amount due to him. Courts in India have adopted the same distinction and have held that in the case of a mere set-off, in the strict sense of the word, the law of limitation should be considered to be applicable on the date on which the plaintiff's claim is brought, whereas in the case of a counter-claim the law of limitation should be applicable on the date when the written statement is filed. If we examine the language of the relevant provisions of the Code of Civil Procedure, there does appear to be considerable difficulty in accepting this distinction. Order 8, Rule 6, provides that where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, then he may present a written statement containing the particulars thereof. Then, Sub-rule 2 provides that the written statement shall have the same effect as a plaint in a cross-suit. Sub-rule 3 says that the rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off. We next have Order 20, Rule 19, under which, where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party. Sub-rule 3 provides that the provisions of this rule shall apply whether the set-off is admissible under Rule 6 of Order 8, or otherwise.

4. It therefore follows that in the Code as it stands, there is no clear distinction between a mere set-off and a counter claim. In either event the defendant is called upon to file a written statement and the written statement is to have the same effect as the plaint in a cross-suit and the decree has to be for the recovery of any sum which appears to be due to either party and this rule applies where the set-off is under Order 8, Rule 6, or under any other provision.

5. In the view which has prevailed in India and which has been accepted by all the High Courts in India, there would be a different terminus ad quern for the case of a mere set-off and the case of a counter-demand. In the former case the amount claimed must be legally recoverable by him on the date of the suit, while in the latter it must be legally recoverable by him on the date of his written statement. The result is that he can get a set-off up to the amount of the plaintiff's claim, provided his claim was not time-barred at the time of the suit. But if he wants to have a decree for the excess amount, he should show that it was not time-barred at the time when he filed his written statement. There is no doubt that in spite of the difficulty caused by the language of these rules, that is a sound principle drawing a distinction between the two classes of cases.

6. A good answer to the plaintiff's contention that the set-off should be held to be time-barred, is that strictly speaking, the Indian Limitation Act does not provide any bar of limitation in the case of a written statement. It is only by taking an equitable view that a plaintiff is allowed to take advantage of the bar of limitation against a defendant. No doubt in Order 8, Rule 6, the words 'legally recoverable' are to be found, but they can be interpreted to mean legally recoverable at the time that the action is brought to recover an amount against which the defendant claims a set-off. It is however quite clear that following the view expressed in England, the Courts in India have so far consistently adopted the same distinction. The learned Counsel for the appellant has not been able to bring to our notice any case in which a contrary view has been definitely taken. Litigants have therefore acted upon this interpretation of the rules, and it would not be fair to the defendant if we depart from the view so consistently taken and adopt a new interpretation which would throw out many written statements that might have been filed on the strength of the existing rulings. On this ground we think it would not be proper for

us to depart from the view taken so far as regards the true interpretation of the Rules. We accordingly hold that the defendant's claim for a set off in this case was not barred by time, inasmuch as it was legally recoverable on the date when the suit was filed.

7. The next point raised on behalf of the plaintiff-respondent is that the defendant could not claim a set-off because a suit brought by him to recover the amount claimed would not have been cognizable by the Civil Court at all. Unfortunately, this point was not raised clearly at the time of the trial, as the plaintiff did not file any replication by way of reply to the written statement filed by the defendant. But the facts are clear. The defendant claims that he paid some amount in the Government Treasury on account of the default made by the plaintiff as lambardar in payment of the arrears of revenue. He alleged that the payment was made by him on account of the plaintiff's share in the Government revenue. If we take his admission literally it would follow that the amount was due on account of the plaintiff's own share and not on account of other co-sharers. In such a contingency Section 222, of the Agra Tenancy Act, would be applicable and the defendant would be allowed to sue the plaintiff in the revenue Court for the recovery of this amount under that section. Assuming that the whole of the amount so paid by the defendant was not due on account of the share of the plaintiff but was due both on account of the plaintiff's share as well as on account of the share of some other co-sharer, it is not yet ascertained how much was due on account of the other co-sharers. There seems to be some force in the contention of the learned advocate for the appellant that if money is paid by a co-sharer on account of the amount due from other co-sharers who have paid the amount to the plaintiff lambardar, and the latter has defaulted, the suit would not, strictly speaking, fall within the language of Sections 222 and 221 of the Agra Tenancy Act if interpreted literally. It cannot fall under the former section because his claim is not for recovery of arrears of revenue on account of the defendant's share, nor can it fall under Section 221 because the defendant co-sharer was not liable to pay the amount to the plaintiff lambardar inasmuch as the amount was not payable by the defendant co-sharer to the plaintiff lambardar.

8. The fact however remains that in the latter case it is still unknown how much was paid on account of the plaintiff's own share and how much on account of the share of the other co-sharers. The defendant did not make any such specification in his written statement and it has not been ascertained by any Court as to how much was actually paid by the plaintiff lambardar on account of the share of the other co-sharers. Without an enquiry into this question it is impossible to determine or ascertain how much was legally recoverable by the defendant which can be sued for in any Civil Court. The payment made by him was a lump sum without any specification. I therefore think that a claim for a set-off in respect of such an unascertained sum cannot be allowed.

King, J.

9. I agree. Order 8, Rule 6, of the Code of Civil Procedure, does not make any distinction between a set-off and a counter-claim. In all the cases to which we have been referred on this point, the Courts have been unanimous in making a distinction between a defensive set-off and a counterclaim in which the defendant asks for a decree to be passed for a sum of money in his favour. The Courts have also been unanimous in holding that if the defendant pleads a set-off merely as a defence to the plaintiff's claim, then it is only necessary that the sum claimed as a set off should be legally recoverable at the date of the institution of the plaintiff's suit. If on the other hand, a defendant makes a counterclaim asking that a decree for a sum of money should be passed in his favour, then the Courts are unanimous in holding that the sum claimed by him should be legally recoverable at the date when he makes his claim, that is at the date when he files his written statement. There is some difficulty in interpreting the language of Order 8, Rule 6, so as to make the words 'legally recoverable' mean legally recoverable at the date of the institution of the suit in one case, and as meaning legally recoverable at the date when the counterclaim is made in another case. It appears however that the distinction between a defensive set-off and a counter-claim is based upon a sound principle and is in accordance with the law of England. Moreover, the Courts in India, have been unanimous on this point and I think that we are bound to follow the unanimous trend of decisions.

10. On the question of jurisdiction, I think that the defendant who had paid a certain sum of money as arrears of revenue, which should have been paid by the plaintiff as a lambardar should have brought his suit against the plaintiff in the Revenue Court under Section 222 of the Agra Tenancy Act. If the revenue paid by the defendant is on account of the plaintiff's share, then there can be no doubt about it that the suit should have been brought in the Revenue Court. The only doubt arises when the revenue payable by the plaintiff was payable partly on account of his own share and partly on account of his shares of other co-sharers. In such a case, it might be argued that the language of Section 222 does not strictly apply because the arrears of revenue paid by the defendant would not strictly be on account of the plaintiff in the sense of going on account of the plaintiff's share of revenue, although, in another sense, it would be on account of the plaintiff because it would be on account of a sum which the plaintiff as lambardar was bound to pay. Probably, if the suit had been brought in the Revenue Court, no objection regarding the jurisdiction of the Revenue Court would ever have been raised. However this may be, the defendant himself stated that the revenue had been paid on account of the plaintiff's share and if this is true, then it is clear that this sum could (not?) have been recovered in a Civil Court. If, on the other hand, the sum was paid partly on account of the other co-sharers, then the sum is not an ascertained sum and cannot be claimed as a set off.