

Chennappa Vs. Raghunatha

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Court : Chennai

Decided On : May-05-1891

Reported in : (1892)ILR15Mad29

Judge : Muttusami Ayyar and ;Parker, JJ.

Appellant : Chennappa

Respondent : Raghunatha

Judgement :

1. We are of opinion that the parties to the present suit fill the same character as regards both the subject-matter of the claim and of the set off. The debt which the plaintiff sues for he seeks to recover as the heir and representative of his father, and the debt which the defendant pleads as a setoff is one which, according to him, the plaintiff is bound to pay as the heir and representative of his father. It may be that if the debts due on the promissory note and the pledge-bond are proved to be ancestral which survived to the plaintiff on his father's death, and if it appears further that he inherited no separate property from his father, and that the debt pleaded as a set-off is not one which, as a son, he is bound to pay under Hindu law, the set-off will have to be disallowed. But a distinction ought to be made between the character in which a liability is sought to be enforced and the conditions of the liability in that character. Section 111 premises two things as necessary to allowing a set-off, viz., (1) that the matter of set-off must be an ascertained sum legally recoverable by the defendant from the plaintiff, and (2)

that the character in which the debt is claimed by, and from, the plaintiff must be the same. In the case before us, the character is the same, viz., the plaintiff is the heir and representative of his father. But if it turns out on enquiry that the plaintiff is not liable to pay the debt claimed by the defendant on the ground that he inherited no separate property from his father, the set-off will fail because the sum is not recoverable legally from the plaintiff by the defendant, and not because the character which the plaintiff fills as regards the debt sued for and the subject-matter of set-off is not the same.

2. Unless the defendant admits that the debt he seeks to recover is not legally recoverable from the plaintiff, the plea of set-off must be allowed to be set up and proved, and ultimately allowed or disallowed according as the cross-debt is or is not shown to be recoverable from the plaintiff.

3. As regards the second question, we are of opinion that a written statement containing a claim of set-off must be regarded as a plaint in regard to such set-off. Having regard to the language of the concluding paragraph of Section 111 and of Section 216 we think that the Legislature intended that it should be treated as a plaint for the cross-claim. The same view was taken of the effect of those Sections by the High Courts at Allahabad and Bombay [Amir Zama v. Nathu Mal I.L.R. 8 All. 396 and Bai Shri Majirajbai v. Narotam Hargovan I.L.R. 13 Bom. 672]

4. As to the third question, we consider that when the memorandum of an appeal is not sufficiently stamped, it is competent to the Court to levy the deficient stamp duty. This view is in accordance with the principle laid down by the Privy Council in Skinner v. Orde I.L.R. 1 All. 230 and the wording of Section 4 of the Limitation Act and Section 54 of the Code of Civil Procedure appear also to support it. We do not concur in the opinion expressed in Bulkaran Rai v. Gobind Nath Tiwari I.L.R. All. 129.

5. Our answer to the fourth question is also in the affirmative.

6. Costs to follow the result.