

(1936) 11 AHC CK 0012

Allahabad High Court

Case No: None

Nitanand

APPELLANT

Vs

Roop Narain and Others

RESPONDENT

Date of Decision: Nov. 25, 1936

Citation: AIR 1937 All 320

Hon'ble Judges: Niamatullah, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Niamatullah, J.

This appeal arises from a suit for profits for 1335 Fasli. The plaintiff-appellant is the uncle of the defendants. The latter's father, Parma Nand, who was the own brother of the plaintiff, admittedly made collections in 1335 Fasli, though the plaintiff was the lambardar. The defendants pleaded payment. At the trial they produced a memorandum of account, alleged to have been written by the plaintiff, and showing that on 20th August 1928 there was a settlement of account between the two brothers, not in respect of the mahal, but in respect of other transactions, in which the two were interested. According to that memorandum of account, a sum of Rs. 361 was found due from the plaintiff to the father of the defendants. The plaintiff denied the genuineness of the memorandum of account, but both the lower Courts have held it to be genuine. They have also believed the evidence of one of the defendants to the effect that the two brothers had settled the accounts between themselves and it was found that Rs. 361 was due from the plaintiff to the father of the defendants. The two brothers are said to have agreed that the sum of Rs. 361 should be appropriated by the plaintiff as whole or part of the profits of his share for 1335 Fasli and that the same would be set-off in the settlement of accounts for profits of that year. Both the Courts below have accepted the truth of this allegation and dismissed the plaintiff's claim in view of the fact that the profits of his share for 1335 Fasli did not exceed the sum of Rs. 361. In second appeal it is contended that

no set-off is permissible in a suit for profits under the Tenancy Act. Reliance is placed on No. 10 of Schedule 2, Agra Tenancy Act, which provides that:

No set-off shall be allowed in any suit under this Act except a sum due to the defendant under an unsatisfied decree under this Act or under any enactment hereby repealed.

2. It is argued that the sum of Rs. 361 was arrived at, on the showing of the defendants themselves, on a settlement of account relating to other transactions and that the defendants are seeking a set-off in respect of that amount against the profits claimed by the plaintiff. I do not think that the lower Courts have allowed any set-off. Their finding is that on 20th August 1928, which corresponds to 1336 Fasli, a sum of Rs. 361 was found due to the defendants' father from the plaintiff and that the two brothers agreed that that sum would be set-off against the plaintiff's share of profits for 1335 Fasli. It is not a case in which the Court itself is allowing a set-off, which is forbidden by the rule to which reference has already been made. The Court is merely giving effect to a set-off already agreed on by the parties. There is a clear distinction between a case in which a Court is called upon to allow a set-off and a case in which it is merely asked to recognize a set-off already made by the parties themselves. The latter case is not prohibited by No. 10, Schedule 2, Agra Tenancy Act.

3. The question can be looked at from another standpoint also. The defence, in substance, amounts to a plea of payment. The settlement of account between the plaintiff and the defendants' father, made on 20th August 1928, coupled with the agreement already mentioned, amounts to payment in anticipation of settlement of account for profits. In this view, the plaintiff should be deemed to have received the whole or part of his share of the profits for 1335 Fasli according as the profits turn out to be less or more than Rs. 361. I am satisfied that the lower Courts have not allowed any set-off in contravention of No. 10, Schedule 2, Tenancy Act. The result is that the appeal fails and is dismissed with costs.