(1909) 08 CAL CK 0043

Calcutta High Court

Case No: None

Edward Dalgleish and Others		APPELLANT
	Vs	
Ramdin Singh Chowdhury and Another		RESPONDENT

Date of Decision: Aug. 20, 1909

Judgement

1. This appeal arises out of a suit brought by the plaintiffs for rent. It appears that the defendants are tenants of the plaintiffs with respect to certain villages and that the plaintiffs are also tenants of the defendants in respect of certain lands in those villages. The suit was filed for the rent due to the plaintiffs for the years 1311, 1812 and 1313. The defendants pleaded that the rent due from the plaintiffs to them for the years 1309 and 1310 must be taken into account by virtue of an arrangement which is set out in paragraph 4 of their written statement. The arrangement, according to the defendants, was that the plaintiffs would receive on account from time to time money as rent of the ticca property from the defendants and subsequently at the time of adjustment they would set-off the money due to the defendants on account of the rents of the lands which they (plaintiffs) held as their tenants. In the first Court, the Subordinate Judge raised the issue: "Are the defendants entitled to a set-off as claimed by them?" Now, the defendants did not, as a matter of fact, claim a set-off in respect of this rent in the sense indicated by Section 111, Code of Civil Procedure, 1882. It was really a plea of payment and, as such, the Subordinate Judge understood it, and tried it, and decided in the defendants'' favour. When the case came up before the learned District Judge he does not seem to have appreciated the true issue. He may possibly have been misled by the way in which issue No. 2 was framed and he stated as a bare proposition of law which no one will dispute that there could be no-set-off of a time-barred debt. The rents for 1309 and 1310 being time-barred according to the statute of limitation when the suit was filed, he held that they could not be set-off by the defendants. This, as we have said, was not the true issue in the case. The matter was one not of set-off in the technical sense of the term, "set-off" as prescribed by

Section 111, but of account and set-off in the general sense of the term, that is to say, a set-off by the plaintiffs of the monies which they had in their pockets due to the defendants against debts accruing due by the defendants to them. We think that the appeal ought to have been heard by the learned District Judge as to these items on this footing and that his bare decision oh law is not a decision on the facts of the case, and cannot be supported.

2. Another point is taken against the decision of the learned District Judge with regard to four items of Rs. 151-3 6 and Rs. 50-15-3 for 1311 and Rs. 127-5 and Rs. 43-10-8 for 1312 alleged by the defendants to be due from the plaintiffs to them and which they desired to set-off as prescribed by Section 111. The learned District Judge has disallowed this claim to set-off without any consideration of the question whether the amounts were due or not on the ground that an ascertained sum means an admitted sum. It is clear that the words ''ascertained sum" in Section 111 cannot mean only an admitted sum, for there would then be no right of set-off in the large majority of cases. An ascertained sum means, according to the ordinary significance of the words, a sum of money of which the amount is fixed and known. Whether the plaintiffs admit it to be due or not is a. question which has to be tried on the defendants'' plea of set-off. We think, therefore, that on both the grounds which are the basis of his decision, the learned District Judge was in error and that the case must be remanded to him for retrial on consideration of the evidence in the case. The decree of the District Judge is, therefore, set aside and the case remanded to the lower appellate Court for re-hearing is the light of the above remarks. Costs Will abide the result.