

## APPELLATE CIVIL.

Before Sir John Wallis, Kt., Chief Justice, and Mr. Justice  
Seshagiri Ayyar.

R. M. M. S. T. VYRAVAN CHETTY *alias* SOMASUNDARAM  
CHETTY (DEFENDANT IN ALL), APPELLANT IN APPEALS NOS. 303 AND  
304 OF 1913 AND RESPONDENT IN SECOND APPEAL NO. 1873 OF 1913,

1915.  
September  
20, 22 and  
24.

v.

SRIMATH DEIVASIKAMANI NATARAJA DESIKAR  
(MATATHIPATHI, TIRUVANNAMALAI ADHINAM) (PLAINTIFF IN ALL),  
RESPONDENT IN APPEALS NOS. 303 AND 304 OF 1913 AND APPELLANT IN  
SECOND APPEAL NO. 1873 OF 1913\*.

30 M. L. J. 59

*Lessor and lessee—Suit for rent—Unliquidated claim for damages which has  
become barred—Equitable set-off, whether available, if possession disturbed.*

In a suit by the lessor for rent, it is not open to the lessee to set up by  
way of equitable set-off an unliquidated claim for damages which was barred at  
the date of the suit.

English case law reviewed.

APPEALS against the decrees of T. MAHADEVA SASTRIYAR, the  
Temporary Subordinate Judge of Rāmnād at Madura, in  
Original Suits Nos. 42 of 1913 and 90 of 1911; and Second  
Appeal against the decree of A. C. DUTT, the District Judge  
of Rāmnād at Madura, in Appeal No. 585 of 1911, preferred  
against the decree of A. SAMBAMURTI AYYAR, the Temporary  
Subordinate Judge of Rāmnād at Madura, in Original Suit No.  
154 of 1910.

The father of the defendant obtained from the predecessor  
in title of the plaintiff in these suits a lease of certain villages for  
18 faslis, from fasli 1306 to 1323. The rent for faslis 1318 and  
1319 was not paid and when sued for the same the defendant  
set up by way of equitable set-off a claim for damages owing to  
disturbance of his possession in faslis 1313 and 1314. The lower  
court disallowed the set off on the ground that the claim thereto  
was barred by limitation on the date of the suit.

~~K. Srinivasa Ayyangar~~ and A. Krishnaswami Ayyar for the  
appellant in Appeals Nos. 303 and 304 of 1913 and respondent  
in Second Appeal No. 1873 of 1913.

\* Appeals Nos. 303 and 304 of 1913 and Second Appeal No. 1873 of 1913.

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DEIVASIKAMANI  
NATARAJA  
DESIKAR.

WALLIS, C.J.

*S. Venkatachariyar* for the appellant in Second Appeal No. 1873 of 1913 and the respondent in Appeals Nos. 303 and 304 of 1913

WALLIS, C.J.—The appellant in these cases when sued for rent in respect of faslis 1318 and 1319 set up by way of equitable set-off a claim against his lessor the plaintiff in respect of disturbance of possession in faslis 1313 and 1314. It is well settled in this Court that claims for unliquidated damages may be raised by way of equitable set-off if they arise out of the same transaction as the plaintiff's cause of action, but I cannot agree that in a case like this such claim can be so set up even if it was barred at the date of the suit. It would certainly not be equitable or in accordance with the equitable principle administered by the Court of Chancery to allow the provisions of the statute of limitations to be evaded in this way. The authorities are referred to in the judgment of my learned brother which I have had the advantages of reading. If *Chidambara Mudaliar v. Krishnaswami Pillai*(1) is inconsistent with the view, I am unable with great respect to follow it. As regards the present case the defendant was in full possession and enjoyment for the faslis in respect of which rent is sued for. Cross-claims on account as between mortgagor and mortgagee, trustee and *cestui que* trust and the like stand on a different footing and I do not wish my observations to be taken as applicable to such cases. Otherwise I agree in the order proposed by my learned brother.

SESHAGIRI  
AYYAR, J.

SESHAGIRI AYYAR, J.—The point for decision in these appeals is whether in a suit by the lessor for rent it is open to the lessee to plead by way of set-off an unliquidated claim for damages which has become barred by limitation arising from obstruction to quiet enjoyment in previous years. My answer is in the negative. Under Order VII, rule 6 of the Code of Civil Procedure, a set-off is not permissible if the money is not legally recoverable. This would include all unsustainable claims whether barred by limitation or otherwise. It is no doubt true that this rule applies in terms only to what is known as legal set-off. Although in this country it has been held in numerous cases that the Code of Civil Procedure does not prevent the defendant from claiming an equitable set-off in

respect of unliquidated damages claimable in connection with the transaction on which the suit is brought, I think that on the principle that equity follows the law, the plea <sup>will be</sup> available only in respect of sums legally recoverable. Lord NORTH states the principle very clearly in *Fittan v. Com' Macclesfield*(1): "For when the legislature had fixed the time at law, it would have been preposterous for equity (which by its own proper authority always maintained a limitation) to countenance laches beyond the period that law had been confined to by Parliament. And therefore in all cases where the legal right has been barred by Parliament, the equitable right to the same thing has been concluded by the same bar." Lord REDESDALE in *Hovendon v. Lord Annesley*(2) expresses himself with equal clearness. "It is said that Courts of Equity are not within the Statutes of Limitations . . . I think it is a mistake in point of language to say that Courts of Equity act merely by analogy to the statutes; they act in obedience to them.

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"I think, therefore, Courts of Equity are bound to yield obedience to the Statute of Limitations upon all legal titles and legal demands, and cannot act contrary to the spirit of its provisions." The Indian legislature, it seems to me, has recognized this in Order XX, rule 19 of the Code of Civil Procedure. Clause (1) of that rule regards the claim to set-off as a claim in a cross suit, and provides for a decree in favour of the defendant. Clause (3) says that this rule is applicable to the plea set-off under rule 6 of Order VIII or otherwise, thereby indicating that equitable set-off is also within the rule. I am therefore of opinion that as the defendant's claim was barred by limitation, the plea of equitable set-off was not open to him. An exception to this rule has been recognized in some cases. Where there is a fiduciary relationship between the parties as in the case of trustee and *cestui que* trust and there is accountability even barred claims may be taken into account in passing the final accounts. This exception has been extended in some of the decided cases in India to mortgages, presumably on the ground that there is accountability between the parties. See *Parasurama Pattar v. Venkatachallam Pattar*(3), *Chidambara Mudaliar v.*

(1) (1684) 1 Vernon, 287; s.c., 23 E.L., 474.

(2) (1806) Sch. & Lef., 630.

(3) (1913) 26 M.L.J., 561.

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*Krishnaswami Pillai*(1) and *Ramdhari Singh v. Permanund Singh*(2). It is not necessary to say now whether these cases have been rightly decided. I see no reason for extending the exception to suits between a lessor and a lessee.

Regarding the memorandum of objections, we think that the defendant is only entitled to simple interest at 9 per cent, but not to compound interest. The plaintiff is entitled to interest at 6 per cent on the arrears of rent due to him from the dates on which they fell due. We are also of opinion that the defendant is not entitled to interest on the sum of Rs. 5,130 found in the previous litigation to be binding on the mutt, prior to the death of Thandavaroya Desikar. The decree must be modified by awarding interest only from fasli 1312. These conclusions are applicable to Second Appeal No. 1873 of 1913. Subject to this modification, the Second Appeal is dismissed. Parties will pay and receive proportionate costs in the memorandum of objections to the two appeals and in the Second Appeal.

S.V.

## APPELLATE CRIMINAL.

*Before Mr. Justice Ayling and Mr. Justice Phillips.*

*Re G. G. JEREMIAH (PETITIONER—ACCUSED), APPELLANT.\**

*European British subject—Summary trial outside British India by Justice of Peace—Jurisdiction—Criminal Procedure Code (Act V of 1898), sec. 530.*

The orders of the Governor-General in Council regulating the powers of the Justice of Peace beyond the limits of British India confer no power on a District Magistrate to try offenders summarily under section 260 of the Code of Criminal Procedure (Act V of 1898).

APPEAL against the order of A. R. Cox, the District Magistrate and Justice of the Peace of the Civil and Military Station of Bangalore, in Calendar Case No. 5 J.P. and petition under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the order of the said Magistrate in the said case.

(1) (1916) 28 M.L.J., 285.

(2) (1913) 19 C.W.N., 1183.

\* Criminal Appeal No. 487 of 1915 (Criminal Revision Petition No. 409 of 1915),

29 M. L. J. 758

1915.  
October  
25 and 27.