APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Cornish.

CHINNAMMAL (PLAINTIFF-PETITIONER), APPELLANT,

1936, March 12.

v.

CHIDAMBARA KOTHANAR (SINCE ALLEGED TO HAVE BECOME INSANE AND CAUSED TO BE REPRESENTED BY G. RAGHAVA KOTHANAR AS HIS GUARDIAN *ad litem* (RESPONDENT—DEFENDANT), RESPONDENT.*

Set off—Equitable set off—Applicability of doctrine of—Specific performance—Decree for—Amount to be deposited into Court by plaintiff under, as condition of getting deed of conveyance—Costs payable by defendant to plaintiff under decree—Deposit of amount directed to be paid by plaintiff less amount of costs awarded to him—Sufficiency of—Applicability of doctrine of equitable set off—Code of Civil Procedure (Act V of 1908), O. XXI, r. 19—Applicability of.

A decree for specific performance provided that, on the plaintiff depositing into Court Rs. 500 within the time mentioned there, the defendant was to execute, and get registered, a deed of conveyance in the plaintiff's favour. The decree further provided that the defendant was to pay the plaintiff a certain amount by way of costs.

The plaintiff deposited into Court within the time limited Rs. 157-15-0, that is to say, Rs. 500 less (i) the costs awarded to her by the decree, (ii) a further sum representing certain other costs which she was entitled to recover by way of restitution under section 144, Civil Procedure Code, and (iii) the interest on certain items of costs.

Held that the plaintiff must be deemed to have carried out the direction in the decree in regard to the deposit of money into Court.

Even if Order XXI, rule 19, of the Code of Civil Procedure was inapplicable, the plaintiff, in availing herself of the set off and deducting the costs, did not exceed her right under the

* Appeal Against Appellate Order No. 134 of 1929.

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general law. The claims were in the nature of cross-demands arising out of the same transaction and the doctrine of equitable set off allowed by Courts of Equity holds good.

Ishri v. *Gopal Saran*, (1884) I.L.R. 6 All. 351, *Ram Lagan Pande* v. *Mohammad Ishaq Khan*, (1919) 18 A.L.J. 162, *Umrao Singh* v. *Kanwal*, (1932) 141 I.C. 15, *Hemendra Nath* v. *Tulshi Singh*, A.I.R. 1930 All. 413, *Brijnath Dass* v. *Juggernath Dass*, (1879) I.L.R. 4 Cal. 742, and *Krishnachandra Bhowmik* v. *Pabna Dhanabhandar Co., Ltd. (in Liquidation)*, (1934) I.L.R. 62 Cal. 298, followed.

APPEAL against the decree of the District Court of Trichinopoly in Appeal Suit No. 205 of 1928 preferred against the order of the Court of the District Munsif of Trichinopoly dated 1st March 1928 and made in Execution Petition No. 182 of 1928 in Original Suit No. 124 of 1918.

K. G. Srinivasa Ayyar for appellant.

M. S. Vaidyanatha Ayyar for respondent.

The JUDGMENT of the Court was delivered by

VENKATASUBBA RAO J.

VENKATASUBBA RAO J.—This case has had a long history. It was commenced in 1918 and, what we hope is the final order, we are now pronouncing in 1936.

Before dealing with the appeal we must advert to a certain matter that has happened. The appellant filed an affidavit and persuaded the Office to treat the respondent as a lunatic without notice to his Counsel on the record. Some person was appointed as his guardian *ad litem*, whose name was entered in the cause-list in the place of the respondent's Counsel. The respondent was not a lunatic so found by inquisition and the procedure adopted, we need hardly point out, is extremely irregular. At the request of Mr. Vaidyanatha Ayyar, the respondent's Counsel, we directed that his name should appear in this

day's list and, whether the respondent is a lunatic or not, he has now had the benefit of being represented by his Counsel on the record. His guardian *ad litem*, we may observe, did neither appear in Court, nor was he represented.

The question argued in the appeal is whether the plaintiff can be deemed to have carried out the direction in the decree in question in regard to the deposit of money into Court. That decree was passed by the High Court on 17th January 1928, and it provided that, on the plaintiff depositing into Court Rs. 500 within the time mentioned there, the defendant was to execute, and get registered, a deed of conveyance in her (the plaintiff's) favour ; the decree further provided that the defendant was to pay the plaintiff a certain amount by way of costs.

The plaintiff deposited into Court within the time limited Rs. 157-15-0, that is to say, Rs. 500 less (i) the costs awarded to her by the decree, (ii) a further sum representing certain other costs which she was entitled to recover by way of restitution under section 144, Civil Procedure Code, and (iii) the interest on certain items of costs.

It is contended for the defendant-respondent that there was a duty cast by the decree upon the plaintiff to deposit the full amount of Rs. 500 and that she, having committed default, was not entitled to the reconveyance. Mr. Vaidyanatha Ayyar has strongly urged that Order XXI, rule 19, Civil Procedure Code, is inapplicable and that therefore the plaintiff was not entitled to deduct from the purchase money the costs awarded to her. The decree, as worded, gives the plaintiff the

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right to demand that the property shall be conveyed to her on her depositing the purchase money, but it does not confer upon the defendant a corresponding right, that is, he cannot, on tendering the conveyance, claim the purchase money from the plaintiff. It may therefore be argued that, as, under the decree by its own force, the defendant is not entitled to recover a sum of money, Order XXI, rule 19, which refers to two parties "entitled to recover sums of money from each other", is inapplicable. Whether independent of the decree the defendant can on tendering a proper conveyance demand the purchase money is a question which it is unnecessary for the present purpose to decide. Assuming, however, that Order XXI, rule 19, is inapplicable, the question arises, did the plaintiff, in availing herself of the set off and deducting the costs, exceed her right under the general law? There is a strong body of authority in favour of the view that the kind of right which the plaintiff claims exists apart from the provisions of the Code. The point has been very fully considered by a Bench of the Allahabad High Court consisting of STRAIGHT Ag. C.J. and MAHMOOD J. in *Ishri* v. *Gopal Saran*(1). The decree there was made in a pre-emption suit and very closely resembles the decree in question. There also it was provided that the plaintiff was to obtain possession on payment of the purchase money and that he was to get a sum by way of costs. The plaintiff deposited the purchase money with the exception of a sum less than the amount of costs awarded to him, and it was held that the principle underlying sections 221 and 247 of the

(1) (1884) I.L.R. 6 All. 351.

Code of 1882 (corresponding to Order XX, rule 6, and Order XXI, rule 19, of the present Code) applied and that the plaintiff was entitled to deduct the costs. MAHMOOD J. points out very forcibly that when under the same decree both the plaintiff's right and the defendant's liability are declared, it would be idle to drive the former to a separate proceeding to recover the costs. Referring to the argument advanced in that case on behalf of the defendant, the learned Judge makes the following trenchant observations :

"The argument, though plausible, has no force. It seems to aim at giving to mere formality the significance of a substantive effect. For it seems to us to involve a very untenable proposition, that for a pre-emptor decree-holder the only way to enforce his decree is to come into Court with the full purchase money in the one hand, offering it to the judgment-debtors, and to stretch out the other hand asking them to give him the costs which the very decree, under which he is depositing the purchase money, awards him. The argument also involves the contingency that a pre-emptor should pay up the purchase money to the judgment-debtors in ready cash, and may have to wait possibly for years before recovering from them the costs awarded to him by the Court, and it is conceivable that he may never be able to recover them at all. We cannot regard such results as consonant with the principles of justice, equity and good conscience, which we are bound to administer in such cases ; and holding these views, we cannot adopt the reasoning upon which the judgment of the lower appellate Court proceeds, nor the argument urged before us in support of that judgment by the learned pleader for the respondents. The effect of our views is to apply, by analogy of sections 221 and 247, the doctrine of set off to the case before us—a course which is consonant in principle with that followed by JACKSON J. in the case of *Jugo Mohun Bukshee* v. *Soorendronath Roy Chowdry*(1), long after the Legislature formulated the rules contained in the two sections just referred to."

(1) (1870) 13 W.R. 106.

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To the same effect are the cases of *Ram Lagan Pande* v. *Mohammad Ishaq Khan*(1) and *Umrao Singh* v. *Kanwal*(2), which also deal with pre-emption decrees.

The decree with which we are concerned is one directing specific performance, but in principle, for the present purpose, there can be no difference between such a decree and a decree in a pre-emption suit. In *Hemendra Nath* v. *Tulshi Singh*(3) the principle was extended to a decree for possession. In that case, the plaintiff was under the decree to get possession on depositing a particular sum and it was held that he was entitled to set off the costs against the amount he was directed to deposit. In *Brijnath Dass* v. *Juggernath Dass*(4) the right to set off the costs due to the plaintiff against the amount due by him was recognised in a redemption suit. In that case, it was held that the plaintiff was entitled to redemption on paying the amount directed less the costs awarded to him. The same principle was extended even further by a Bench of the Calcutta High Court in *Krishnachandra Bhowmik* v. *Pabna Dhanabhandar Co., Ltd. (in Liquidation)*(5). The facts were that the Subordinate Judge's order under which the appellant had paid certain costs to the opposite party was subsequently reversed. Under a later order of the Judicial Committee in the same suit, an amount representing costs was payable by him (the appellant) to his opponent. When that order was sought to be executed, he claimed to deduct from the sum due the amount

(1) (1919) 18 A.L.J. 162. (2) (1932) 141 I.C. 15.
(3) A.I.R. 1930 All. 413. (4) (1879) I.L.R. 4 Cal. 742.
(5) (1934) I.L.R. 62 Cal. 298.

payable to himself. It was held that, independent of Order XXI, rule 19, on general principles and in the exercise of the Court's inherent power, it could give effect to such a claim.

These cases in our opinion proceed on a correct principle and we are prepared to follow them. First, as to the costs expressly payable to the appellant under the decree, the matter stands thus : she could have brought into Court the full amount of Rs. 500 and simultaneously attached a portion of that sum for realising the costs due to herself. That would be a needless and idle formality to observe. Secondly, in regard to the costs due to her by way of restitution, the right to recover those costs also accrued to her in virtue of the same decree of the High Court. In short, the claims are in the nature of cross-demands arising out of the same transaction and the doctrine of equitable set off allowed by Courts of Equity holds good.

Mr. Vaidyanatha Ayyar next contends that under the High Court's decree the plaintiff was not justified in deducting interest on the costs incurred in the first Court. We think the expression " full costs ", in the circumstances, includes the interest that had already been awarded to her by the lower Court. As regards the interest deducted on the costs due by way of restitution, we see no reason to think that the plaintiff acted wrongly. She calculated interest at six per cent and had an application been made under section 144, Civil Procedure Code, interest at that rate would have been granted to her.

In the result, we hold that the plaintiff has deposited the proper amount into Court. The

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appeal is allowed; the lower Court's order is reversed and the order of the Court of first instance is restored. The defendant shall pay the plaintiff's costs in the two Courts below; in this Court we make no order as to costs.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Varadachariar and Mr. Justice Mockett.

1936, March 19.

MORAVANENI VEERAYYA AND NINE OTHERS (DEFENDANTS 1 to 5 AND 7 TO 9 AND NIL), APPELLANTS,

v.

SREE RAJA BOMMADEVARA VENKATA BHASHYAKARLA RAO BAHADUR, MINOR REPRESENTED BY MR. M. V. RAMA RAO NAIDU GARU, (PLAINTIFF), RESPONDENT.*

Hindu Law—Father—Patta by, granting occupancy rights in homefarm lands—Binding nature of, against minor son, as alienation by manager or guardian or as conversion of homefarm lands into ryoti lands by "landholder" within meaning of Madras Estates Land Act (I of 1908)—Partition suit by son against father—Preliminary and final decrees in—Grant of patta between dates of—Village in which lands situated—Allotment of, to son's share, by final decree—Ss. 3 (5), 46 and 181 of Madras Estates Land Act—Declaration of invalidity of patta and recovery of mesne profits—Suit by son for—Decree for son in—Payment by him of amount realised under patta and utilised in payment of debt binding upon him condition of, if—Indian Contract Act (IX of 1872), ss. 64 and 65—Specific Relief Act (I of 1877), sec. 41—Effect of—Past profits—Son's right to.

A suit for partition instituted on behalf of a minor Hindu son against his father was compromised and a preliminary

* Appeal No. 25 of 1932.