1913

SONI RAM v. KANHAIYA LAL.

Lordships are not disposed to depart from the established practice of this Board not to allow on appeals to His Majesty in Council new cases to be made which were not made below.

The result is that their Lordships will humbly advise His Majesty that this appeal should be dismissed, and the decree of the High Court should be affirmed.

*Appeal dismissed.*

Solicitor for the appellant:—*Edward Dalgado.*

J. V. W.

## APPELLATE CIVIL.

1913

*January*, 10

*Before Mr. Justice Sir George Knox and Mr. Justice Muhammad Rafiq.*

BACHCHAN LAL AND OTHERS (PLAINTIFFS) *v.* BANARSI DAS (DEFENDANT).*

*Civil Procedure Code* (1908), *order VIII, rule* 6—*Set-off—Claim barred according to* lex fori, *but not according to* lex loci contractus.

In a suit filed against him in the United Provinces the defendant claimed to set off a debt, which, though it would have been barred by limitation in the United Provinces, was not barred according to the local law (that of the Punjab) applicable thereto. *Held* that the set-off claimed was admissible.

THE facts of this case, so far as they are material to the purposes of this report, are as follows. The plaintiffs sued to recover Rs. 3,200 from the defendant, who was a resident of Umbala in the Punjab, the money being alleged to be due as the result of dealings in flour between the parties. Amongst other defences, the defendant claimed to set off the amount due on a certain rukka for Rs. 200. This set-off was disallowed by the court of first instance upon the ground that the claim on the rukka was barred by limitation. On appeal by the defendant, however, the lower appellate Court reversed the finding of the court below on this point, holding that the local law of the Punjab applied to the rukka in question, according to which the debt was not time-barred. The plaintiffs appealed in respect of this and other matters to the High Court.

The Hon'ble Dr. *Sundar Lal* and Mr. *A. P. Dube*, for the appellants.

Babu *Satya Chandra Mukerji*, for the respondent.

KNOX and MUHAMMAD RAFIQ, JJ.:—The appellants before us in this second appeal were plaintiffs in the court of first instance.

* Second Appeal No. 1264 of 1911 from a decree of Austin Kendall, District Judge of Cawnpore, dated the 21st of August, 1911, modifying a decree of Mohan Lal Hukku, Subordinate Judge of Cawnpore, dated the 6th of July, 1910.

They sued the respondent for a sum of money together with costs. The sum of money, they claimed, was alleged to have arisen out of certain dealings in wheat between the parties. The sum which they sued for was Rs. 3,200. The lower appellate Court went into the accounts and gave the appellants a decree for Rs. 374-0-6 with proportionate costs. Against this decree the appellants have brought the present appeal. In the memorandum of appeal they have raised several pleas. One of these pleas, namely, plea No. 6, has been abandoned, and the pleas urged before us really resolve themselves into two, the first being that the lower appellate Court was wrong in debiting the appellants with the amount of a rukka dated the 7th of December, 1903, inasmuch as the claim on that rukka was barred by limitation.

The second point was that the account books produced by the respondent before the lower appellate Court had not been proved according to law. Before dealing with this we would note that the third plea in the memorandum of appeal is a plea calculated to get behind a finding of fact based upon evidence and of this we can take no account in second appeal. The second plea, which was to the effect that the lower court ought to have passed a preliminary decree under order XX, rule 16 of the Code of Civil Procedure, is not entitled to any weight. We agree with the learned Judge of the court below that this was not a case in which a preliminary decree was required.

As regards the action of the lower court with reference to the rukka, the contention was that the court ought to have in the present case applied the provisions of the Indian Limitation Act of 1908 without any reference to the provisions of the Punjab Act No. I of 1904. Reference was made to Dicey on the Conflict of Laws, rule 118, page 711. But the learned advocate overlooked altogether in his argument the provisions contained in the Code of Civil Procedure, vide order VIII, rule 6. This order and rule apply equally as law in these provinces as in the Punjab in suits for recovery of money. The defendant can claim to set off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff. Without going any further into the contention raised by the learned advocate, the sum due on the rukka was a sum which the defendant, if

1913

BACHCHAN LAL v. BANARSI DAS.

he had sued in the Punjab, could have recovered by law from the plaintiff.

As regards the plea relating to the account books, we notice that the appellants, when they filed their objections in the lower appellate Court, filled the roll of respondents in that court, and they never objected that the account books had not been proved. We understand that the respondent went into the witness box and as a matter of fact did prove the account books. This plea also fails. The appeal fails and is dismissed with costs.

*Appeal dismissed.*

---

1913

January, 8.

*Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.*

BIHARI LAL (PLAINTIFF) *v.* DAUD HUSAIN AND OTHERS (DEFENDANTS).*

*Hindu widow—Hindu law—Compromise followed by an award settling disputes as to the property of various members of the family—Effect of such award on reversionary interests.*

Where the widow of one and the son of the other of two brothers, Hindus separated in estate, entered into a compromise, which was found to be reasonable in its nature, concerning the partition of the property of the two brothers, and an award was made on the basis of such compromise, it was *held* that it was not open to the reversioner to dispute the validity of the compromise and award, especially when a considerable time had elapsed and most of the property had changed hands meanwhile. *Khunni Lal* v. *Gobind Krishna Narain* (1) and *Madan Lal* v. *Chuttan Singh* (2) followed.

THIS was a suit to set aside a deed of compromise and an award based thereon and to recover possession of certain immovable property.

The plaintiff came into court alleging that one Ganesh Rai, his maternal grandfather, was a separated Hindu and was the sole owner of the property in suit; that Musammat Gango, the widow of Ganesh Rai, on his death, took possession of the aforesaid property as a life-tenant, but unlawfully transferred it, under an arbitration award, to one Bhagirath, who was Ganesh Rai's cousin, that Bhagirath sold a portion of it to Musammat Wali-un-nissa, and that the ancestor of the defendants brought a suit against the latter for pre-emption and obtained possession of the property from her. The plaintiff prayed that the arbitration award might be set aside and

* Second Appeal No. 339 of 1912 from a decree of D. R. Lyle, District Judge of Shahjahanpur, dated the 30th of January, 1912, reversing a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 11th of August, 1911.

(1) (1911) I. L. R., 33 All., 366. (2) (1912) 10 A. L. J., 101.