

Before Mr. Justice Chamier and Mr. Justice Muhammad Rafiq.

BALGOBIND AND ANOTHER (DEFENDANTS) v. RAM SARUP AND OTHERS  
(PLAINTIFFS) AND UDAI RAM AND OTHERS (DEFENDANTS.)\*

1914  
May, 27.

Civil Procedure Code (1908), order XLI, rule 22—Suit for dissolution of partnership—Appeal—Cross objections filed by one respondent against another

Held that on an appeal in a suit for dissolution of partnership it is competent to the Court to allow a respondent to take cross objections against another respondent. *Jadunandan Prosad Singh v. Deo Narain Singh* (1) and *Abdul Ghani v. Muhammad Fasih* (2) referred to.

THE facts of this case were as follows :—

In a suit for dissolution of partnership a decree for dissolution was passed and a receiver was appointed to make up the accounts of the partnership and submit a report. On receipt of the receiver's report a decree was passed. The plaintiffs in the suit preferred an appeal to the District Judge, and some of the respondents filed cross objections.

Niadar Mal, one of the respondents to that appeal, in his cross objections raised a question between himself and another respondent which did not concern the appellants. The District Judge considered the objections both on behalf of the appellants and the respondents and modified the decree of the first court. Two of the respondents appealed to the High Court contending, *inter alia*, that the cross objection filed by Niadar Mal ought not to have been entertained by the lower appellate court.

Dr. *Surendro Nath Sen*, for the appellants.

The Hon'ble Pandit *Moti Lal Nehru*, Mr. *J. M. Banerji* and Babu *Lalit Mohan Banerji*, for the respondents.

CHAMIER and MUHAMMAD RAFIQ, JJ.—This appeal arises out of a suit for the dissolution of a partnership. A decree for dissolution was passed and a receiver was appointed to make up the accounts of the partnership and submit a report. On receipt of the receiver's report a decree was passed. The plaintiffs in the suit preferred an appeal to the District Judge, and some of the respondents filed cross objections. Niadar Mal, one of the respondents to that appeal, in his cross objections raised a question

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\* Second Appeal No. 791 of 1912 from a decree of Mubarak Husain, Second Additional Judge of Meerut, dated the 27th of February, 1912, modifying a decree of Sobti Raghubans Lal, Subordinate Judge of Meerut, dated the 10th of April, 1911.

(1) (1911) 16 C. W. N., 612. (2) (1905) I. L. B., 28 All., 95.

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between himself and another respondent which did not concern the appellants. The learned Judge, after a careful consideration of the objections both on behalf of the appellants and the respondents, modified the decree of the first court. The present appellants, who were respondents in the court below, object to the decree of the lower appellate court on two grounds. They say that interest should not have been allowed on the sum found due to a partner either for the period prior to dissolution or subsequent thereto. The second objection is that the cross objection of Niadar Mal that the sum of Rs. 550 had not been paid to him by Niadar Singh respondent in the court below should not have been entertained in view of the provisions of order XLI, rule 22, of the Code of Civil Procedure. We think that neither of the grounds taken in appeal has any force. The lower appellate court allowed interest to all the partners to whom any sum of money was found due from other partners. The rate of interest awarded was not high, and it is not contended that the lower court had no power to decree interest. As to the second objection the case of *Jaduman-dan Prosad Singh v. Deo Narain Singh* (1) may be referred to, also the case of *Abdul Ghani v. Muhammad Fasih* (2). The latter case was decided when the old Code of Civil Procedure was in force. It was held that under special circumstances it was competent to an appellate court to allow a respondent to take cross objections against another respondent. The Calcutta case was decided under the present Code of Civil Procedure. The learned Judges of the Calcutta High Court say that the language of order XLI, rule 22, of the Code of Civil Procedure, is comprehensive enough to admit of cross objections being preferred by one respondent against another. As accounts were being taken between all the parties whether plaintiffs or defendants, we think that Niadar Mal was entitled to take objections as to the sum of Rs. 550, against Niadar Singh who was also a respondent in the case before the lower appellate court. The appeal therefore fails and is dismissed with costs. There are cross objections on behalf of the plaintiffs respondents which are not pressed and are dismissed with costs.

*Appeal dismissed.*

(1) (1911) 18 C. W. N., 612.

(2) (1905) I. L. R., 28 All., 96.