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MAUNG
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v.

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ONE.DUCKWORTH,
J.

evidence was not admissible under the law of evidence.

The appeal is, therefore, allowed. The decrees of the two lower Courts are set aside and the respondents' suit is dismissed with costs in all Courts.

APPELLATE CIVIL.

Before Mr. Justice Lentaigne.

D. S. ABRAHAM & Co.

v.

EBRAHIM GORABHOY.*

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July 7.

Set-off, valuation of, for the purpose of jurisdiction—Suits Valuation Act (VII of 1887), section 8—Portion of the amount, claimed to be set-off, admitted and defendant given credit for, in the plaint—Civil Procedure Code (V of 1908), Order 8, Rule 6.

Held, that the valuation of a set-off for the purpose of jurisdiction must be taken as relating to the whole of the ascertained sum so pleaded, and without reference to any portion of the plaintiff's claim which the defendant admits.

Held, also, that where the plaintiff in his plaint admits and gives credit to the defendant for a certain sum, such sum being a portion of the amount which the defendant seeks to set-off, the valuation of the set-off for purposes of jurisdiction must be taken to be the amount of the ascertained sum pleaded, exclusive of the amount given credit for.

Brojendra Nath Das v. Budge Budge Jute Mill Co., 20 Cal., 527—followed.

N. N. Sen—for the Appellants.

Auzam—for the Respondent.

LENTAIGNE, J.—The petitioners, as plaintiffs, sued the defendant-respondent, claiming Rs. 283-8-6 from the defendant-respondent, alleging that Rs. 550-13-0 was due to plaintiff as the price of goods purchased by defendant at auctions held by the plaintiff, but giving defendant credit for Rs. 267-4-6 as amounts

* Civil Revision No. 105 of 1923 against the decree of the Rangoon Small Cause Court in Civil Regular No. 4838 of 1922.

due to defendant in respect of goods sold on behalf of the defendant.

The defendant-respondent filed a written statement admitting that the Rs. 550-13-0 was due to the plaintiff as alleged in the plaint, refusing to accept the credit of Rs. 267-4-6 in its entirety but only as regards Rs. 248-8-0 thereof, and then making other cross-claims which, when added to the Rs. 248-8-0 amount to Rs. 838-4-6. He then claimed to set-off the admitted Rs. 550-13-0 against his cross-claim of Rs. 838-4-6 and prayed that plaintiff's claim be dismissed with costs, and that the defendant be given a decree for Rs. 287-7-6 with costs. Of the amount so sought to be set-off, the greater portion is in the nature of an equitable set-off.

The case came on for hearing before the Second Judge of the Court of Small Causes, and no objection was raised to that Judge exercising jurisdiction in the case. He eventually decided various issues and granted a decree in favour of the plaintiff for Rs. 37-8-6 and dismissed the defendant's counterclaim, and directed each party to bear his own costs. Though this was the form of the decree, the actual decision meant that a considerable portion of the counterclaim had been allowed so as to reduce the plaintiff's claim to this small balance.

The plaintiff filed an application that the judgment and decree be revised on various grounds, none of which have been mentioned or argued before me. The plaintiff has, however, also filed three supplementary grounds of revision in a later petition:—

firstly, questioning the jurisdiction of the Second Judge of the Court to hear and decide the counterclaim on the ground that the same was for a sum exceeding Rs. 500 ;

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secondly, contending that the set-off was insufficiently stamped ; and

thirdly, objecting on the ground that the lower Court had omitted to frame any issues on the principal points raised by the plaintiff, namely, plaintiff's lien on articles claimed by defendant which defendant left with plaintiff for sale.

The contentions urged before me were confined to the first and second of these supplementary grounds. The first contention is based on the rules appearing at page 2 of the Manual relating to the Practice in the Rangoon Court of Small Causes. Rule 5 provides for the distribution of the work amongst the Judges of the Court *inter alia* as follows :—

“ The Chief Judge disposes of—

(3) Suits under the summary procedure provisions of over Rs. 500 in value, and also applications therein by defendants for leave to defend.”

“ The Second Judge disposes of—

(1) All other suits which exceed Rs. 100 in value.”

It is contended that the effect of the provisions set out above is to limit the jurisdiction of the Second Judge to cases which do not exceed Rs. 500, in value, and that, if the proper valuation of the set-off exceeds Rs. 500, in value, the set-off should in any case be treated under sub-rule (2) of Order VIII, Rule 8, as a plaint in a cross-suit, and it, therefore, raises the valuation of the suit to above the limit of Rs. 500, and that, consequently, the Second Judge has not jurisdiction to try it, and that the case now before me, is, for that reason, a suit of a class which the Second Judge had no jurisdiction to try.

The above rules have been made under the provisions of section 32 of the Rangoon Small Cause

Courts Act, 1920, which enacts that— “The Chief Court, may from time to time, by Rules having the force of law :—

- (i) provide for the exercise by one or more of the Judges of the Court of any powers conferred on the Court by this Act or any other enactment for the time being in force.”

From the above rules, read with section 32 of the Act, I must hold that the jurisdiction of the Second Judge is limited to suits which, for valuation purposes, do not exceed Rs. 500, and, if the set-off in this case raises the valuation of the suit above Rs. 500, I must hold that the Second Judge cannot try the set-off ; and that, if he attempts to do so, he would be exceeding his jurisdiction.

In order to obtain a clear conception of the points of law arising on this contention, and in order to clear away some misconceptions, it should be noted that there is an important difference between the method of valuation for purposes of jurisdiction permissible in the case of a claim for a money decree made in a plaint and the method of valuation for purposes of jurisdiction permissible in the case of a set-off pleaded by a defendant in his written statement.

Section 8 of the Suits Valuation Act, 1887, is ordinarily the provision regulating the valuation of a plaint in a suit for the purposes of jurisdiction ; and when that provision is read with the provisions of the Court Fees Act, 1870, the valuation of a plaint in which a money decree is claimed is based on the actual sum claimed after allowing for deductions, such as sums expressly set-off in the plaint.

The right of a defendant to plead a set-off is provided for in Rule 6 of Order VIII of the Code of Civil Procedure ; and it allows him to plead

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such set-off in the following words : " Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand *any ascertained sum of money* legally recoverable by him from the plaintiff, *not exceeding the pecuniary limits of the jurisdiction of the Court*, and etc. the defendant may present a written statement containing particulars of the debt sought to be set-off." I think that the words " not exceeding the pecuniary limits of the jurisdiction of the Court " must, in the above rule, be construed as applying to the whole of the ascertained sum. That being so, the valuation of a set-off, for the purposes of jurisdiction, must be taken as relating to the whole of the ascertained sum so pleaded and without reference to any portion of the plaintiff's claim which the defendant admits.

I assume that it was in consequence of this construction of the above rule relating to what is known as a "legal set-off" that the the Calcutta High Court held in the case of *Brojendra Nath Das v. Budge Budge Jute Mill Co* (1), that even in the case of an equitable set-off it was not permissible for the defendant in the Calcutta Court of Small Causes, after admitting the plaintiff's claim for Rs. 1,197-5-6, to plead an equitable set-off of Rs. 2,738-4-0, being the compensation or damages representing the loss caused by a breach of contract, and, after allowing for and deducting therefrom the amount of the admitted claim, to claim a decree for the balance Rs. 1,540-14-6, because the Rs. 2,738-4-0, was in excess of the Rs. 2,000, the pecuniary limits of the jurisdiction of the Court. The same rule of construction was recently adopted by a bench of this Court, of

which I was a member, and in my opinion this method of valuation should be applied equally whether the set-off is of the nature of a "legal set-off" or of an equitable set-off.

The question then arises what is the amount of the set-off in this case regarded as the ascertained sum for the purposes of the above rule. At first sight it might appear to be the total sum of Rs. 838-4-6, actually pleaded; but, if we regard the question from another point of view, it becomes apparent that it was open to the defendant to accept any portion of the credit actually allowed in the plaint and then to plead that there is an additional sum to be set-off; and I think that, when the matter is regarded in that light, the additional sum is the only sum which should be set-off by the defendant. In the case before me, the defendant accepts the credit of Rs. 248-8-0, out of the larger credit specified in the plaint and, when he states that he claims that there should be a set-off of Rs. 838-4-6, he includes in that amount the credit already admitted and allowed by the plaintiff to the extent of Rs. 248-8-0. Therefore, the actual additional sum which he claims to set-off is only the balance Rs. 589-12-6; and that is the proper amount to take as the value of the set-off for the purposes of jurisdiction in the case now before me.

Having regard to the rules framed by the Chief Court, fixing the pecuniary jurisdiction of the Second Judge of the Court, I must hold that the limits of his pecuniary jurisdiction is Rs. 500, and that he has not jurisdiction to try this set-off of Rs. 589-12-6, which exceeds the said pecuniary limits of his jurisdiction. Though the valuation of the plaint was under Rs. 500, the defendant was entitled to have his set-off heard and decided, together with the claim in the plaint; and, consequently, I must hold

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that it was the duty of the Second Judge to submit the case to the Chief Judge as the only Judge of the Court holding the necessary jurisdiction to try the suit.

As regards the other objection as to the Court-fee paid on the set-off, I see no reason why the provisions of the Court Fees Act should not apply to the valuation of the set-off for the purposes of Court-fees and, as the Court-fee on the amount claimed has been paid in accordance with that Act, no question appears to arise under this head. But, even if there was any error in the calculation of the Court-fee paid, I would also be bound to hold that such error cannot effect the merits of the case or the jurisdiction of the Court, and that, consequently, I would be debarred under section 99 of the Code of Civil Procedure from reversing or substantially varying any decree on that ground.

Having regard to the finding as to the valuation of the set-off for purposes of jurisdiction exceeding the pecuniary limits of the jurisdiction of the learned Second Judge, and that the suit should have been tried by the learned Chief Judge of the Court, I set aside the decree passed by the Second Judge and I direct that the case be reheard and decided by the learned Chief Judge of the Court.

As regards costs, the objection as to the jurisdiction does not appear to have been taken in the lower Court, and it was only taken as a supplementary ground in this Court; and I, therefore, direct that each party shall bear his own costs in this Court, and that the costs in the lower Court shall abide the final result of the suit.