

## APPELLATE CIVIL.

*Before Mr. Justice Duckworth.*

MAUNG PO MAUNG.

v.

MAUNG AUNG PAW.\*

1924

May 21.

*Co-operative Societies Act (II of 1912), section 42 (6)—Payment by liquidator of one member's monies in settlement of a debt by another member—Suit between the members for the repayment of the amount.*

Where the liquidator of a Co-operative Credit Society utilized a sum of money standing to the credit of A, a member of the society, in payment of a debt to the society owing by B, *held*, that section 42 (6) of the Co-operative Societies Act, 1912, did not bar a suit by A against B for the recovery of that amount.

*Held, also*, that section 42 (6) was intended to prevent litigation in the Civil Courts in regard to the validity of the actions and decisions of a liquidator under the Act, except in respect of certain specified orders which are appealable to a District Court or which may be enforced as decrees of Courts.

*Aiyangar*—for the Petitioner.

*Mukerjee*—for the Respondent.

DUCKWORTH, J.—Respondent-Plaintiff, Maung Aung Paw, and Appellant-Defendant were members of the Moksogyon Co-operative Credit Society, which was dissolved in 1918. Maung Aung Paw has clearly paid up all his dues. The liquidator says so, and Maung Aung Paw possesses a certificate to that effect. It appears that out of the sale proceeds of some of his paddy the liquidator had in deposit a sum of Rs. 261-6-0 to the credit of Maung Aung Paw. The liquidator, though Maung Aung Paw had paid up all that was due by him, utilized this sum early in 1923 in part payment of a debt, to the society by Maung Po Maung. Maung Aung Paw holds a certificate showing that this was actually

\* Civil Revision No. 143 of 1923 (at Mandalay) from the decree of the District Court of Shwebo in Civil Appeal No. 89 of 1923.

1924  
 MAUNG PO  
 MAUNG  
 v.  
 MAUNG AUNG  
 PAW.  
 —  
 DUCKWORTH,  
 J.

done. In these proceedings, he sued Maung Po Maung to recover that amount. The Township Court dismissed his suit, but the District Court decreed the claim. Maung Po Maung has now applied to this Court on revision under section 115, Civil Procedure Code. His case has all along been that he has paid up all that was due by him, and that the accounts of the society have been settled. He pleaded ignorance of the facts alleged by the plaintiff-respondent. On revision Mr. Aiyangar, who appeared for Maung Po Maung, raised two points, *i.e.*, that, under section 42 (6) of the Co-operative Societies Act of 1912, a Civil Court has no jurisdiction to deal with Maung Aung Paw's claim, and that in any case, the claim could not be granted, inasmuch as plaintiff-respondent admitted that Maung Po Maung had paid all his dues to the society, and because the matter involved a suit for an account between the members of the society.

It is true that Maung Aung Paw did say in his cross-examination :—"I know that U Po Maung has paid his dues." But this may merely mean that Maung Aung Paw knows that U Po Maung had paid his dues by now, and, in any case, the liquidator's evidence proves that the sum of Rs. 261-6-0, belonging to Maung Aung Paw, was used towards settling Maung Po Maung's debt. In regard to Mr. Aiyangar's last point, also, Maung Po Maung, in his written statement, alleged that the accounts of the society have been settled. The present suit is not therefore, in its essence, a suit for an account at all.

With reference to the first point section 42 (6) serves to exclude with certain reservations from a Civil Court's jurisdiction "Any matter connected with the dissolution of a registered society under this Act." To my mind, the matter in suit is purely

one between Maung Aung Paw and Maung Po Maung, and it in no way affects the action of the liquidator, nor is it connected, except indirectly, with the dissolution of the society. What I think that section 42 (6) was intended to prevent, was litigation in the Civil Courts in regard to the validity of the actions and decisions of a liquidator under the Act, except in respect of certain specified orders, which are appealable to a District Court, or which may be enforced as decrees of Courts. I do not consider that it was ever intended to preclude a suit of the sort we have here. Were it so, it is hard to see where a man, situated like Maung Aung Paw, could get relief, to which he is clearly entitled under section 69, Contract Act, as well as under the common law. The District Court, therefore, did not act without jurisdiction, neither was its decision contrary to law. There are no grounds for revision, and the application is dismissed with costs.

1924

MAUNG PO  
MAUNG  
v.  
MAUNG AUNG  
PAW.  
DUCKWORTH,  
J.