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 RAMDEO
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of the word, and if I am right in thinking that the expression "set off" is for the purposes of those sections the equivalent of the word "debt," it must follow that there is a "set off" of Rs. 500 admitted by the parties, and that the Small Cause Court has jurisdiction to entertain the suit.

The wording of the English County Courts Act is slightly different, and consequently the English cases are not direct authorities on the point, but I should add that I cannot reconcile the decision of Huddleston, B., and Grantham, J., in *Hubbard v. Goodley* (1), with that of Mathew and Cave, JJ., in *Percival v. Podley* (2), so that there cannot be said to be any current of English decisions in either direction.

The answer of this Court to the question stated is in the negative.

Attorneys for the plaintiffs: *Messrs. Pittar and Chick.*

Attorneys for the defendant: *Messrs. Leslie and Sons.*

T. A. P.

APPELLATE CIVIL.

Before Mr. Justice O'Kinealy and Mr. Justice Ameer Ali.

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 Aug. 22.

RADHA MADHUB SANTRA AND OTHERS (DEFENDANTS) v. LUKHI NARAIN ROY CHOWDHRY (PLAINTIFF).*

Withdrawal of suit—Civil Procedure Code (Act XIV of 1882), s. 373—Withdrawal of suit without permission to bring fresh suit—Application of the Civil Procedure Code to suits in Revenue Courts.

Section 373 of the Civil Procedure Code (Act XIV of 1882) does not apply to suits before the Revenue authorities under Act X of 1859, that Act being a complete Code in itself.

THE facts of this case were shortly as follows

The plaintiff brought a suit for arrears of rent in the Deputy Collector's Court under Act X of 1859 for the years 1295, 1296 to

* Appeal from Appellate Decree No. 494 of 1892, against the decree of B. L. Gupta, Esq., Judge of Cuttack, dated the 6th January 1892, reversing the decree of Babu Brojo Mohun Roy, Deputy Collector of Cuttack, dated the 15th of September 1891.

(1) L. R. 25 Q. B. D. 156.

(2) L. R. 18 Q. B. D. 636.

8 Pous *kist* of 1297. After the case was partially heard the plaintiff withdrew his suit without obtaining permission to bring a fresh suit. Subsequently, the plaintiff instituted a similar suit against the same parties in respect of the same rent. The defendants contended that the matter was *res judicata*, and that the suit would not lie. The Deputy Collector considering that section 373 of the Civil Procedure Code was applicable to rent-suits on the authority of *Madho Prakash Singh v. Murli Manohar* (1) held that the plaintiff's claim was barred, and dismissed his suit. On appeal the District Judge of Cuttaek reversed the Deputy Collector's finding on the authority of the cases *Modhoo Soodan Mullick v. Panck Cowrie Mullick* (2) and *Beer Chunder Joolraj v. Tarinee Churn Roy* (3).

From this decision the defendants appealed to the High Court.

Babu *Karuna Sindhu Mukerjee* for the appellants.

Babu *Upendro Nath Mitter* and Babu *Satish Chunder Ghose* for the respondent.

Babu *Karuna Sindhu Mukerjee* :—The provisions of section 373 of the Civil Procedure Code are applicable to rent suits under Act X of 1859. Section 4 of the Civil Procedure Code enumerates the Acts which are not affected by the Civil Procedure Code, and Act X of 1859 is not in list. It was held in the case of *Nimoni Singh Deo v. Taranuth Mukerjee* (4), that Revenue Courts are Civil Courts within the meaning of the Civil Procedure Code, and in *Madho Prakash Singh v. Murli Manohar* (1), the Allahabad High Court held that, when the Rent Acts of the North-Western Provinces were silent as regards procedure, the procedure of the Civil Procedure Code should be followed. There is no analogous section in Act X of 1859 to correspond with section 373 of the Civil Procedure Code, and, therefore, under that ruling, section 373 bars this second suit. If that decision is correct as regards the Rent Acts of the North-Western Provinces, it is correct, and has been followed, in respect of the Rent Acts in Bengal. In the case of *Adhirani Narain Kumari v. Rughu Mohapatro* (5), the Calcutta High Court approved of the case of *Madho Prakash Singh*

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RADHA
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CHOWDHRY.

(1) I. L. R., 5 All., 406.

(4) I. L. R., 9 Calc., 295 : L. R.,

(2) 7 W. R., 302.

9 I. A., 174.

(3) 11 W. R., 46.

(5) I. L. R., 12 Calc., 50.

1893 v. *Murli Manohar* (1): the only question before them was, did section 43 of the Civil Procedure Code apply to rent suits under Act X of 1859? and they decided in the affirmative. The reason that section 43 was applicable was because there was no similar provision in Act X of 1859. If section 43 is applicable to suits under Act X of 1859, so should section 373 be made applicable, and this claim should be held to be *res judicata*.

The respondents were not called upon.

The judgment of the Court (O'KINEALY and AMBER ALI, JJ.), was delivered by

AMBER ALI, J.—This is an appeal from the decision of the District Judge of Cuttack, dated the 6th of January 1892, reversing the decision of the Deputy Collector.

The narrow point for decision in this case is whether section 373 of the Code of Criminal Procedure applies to suits before the Revenue authorities under Act X of 1859.

We think the point has been virtually decided by the reasoning in the Full Bench decision in *Nagendro Nath Mullick v. Mathura Mahun Parhi* (2), in which it was held that Act X of 1859, where it is still in force, is a complete Code in itself.

We, therefore, think that the decision of the lower Appellate Court is correct, and that this appeal should be dismissed with costs.

c. s.

Appeal dismissed.

Before Mr. Justice Norris and Mr. Justice Banerjee.

1893 DAKHYANI DEBBA (DEFENDANT) v. DOLEGOBIND CHOWDHRY
August 24 (PLAINTIFF).*

Small Cause Court, Jurisdiction of—Suit to establish right to crops on basis of title to land on which they are grown—Question of title—Decision as to genuineness of deed—Competent Court.

A suit to establish the plaintiff's right to a standing crop on the basis of his title to the land is an ordinary civil suit, and not a suit of a Small Cause Court nature.

* Appeal from Appellate Decree, No. 857 of 1892, against the decree of Babu Anando Kumar Shurbadhicarry, Subordinate Judge of Manbhum, dated the 29th of February 1892, affirming the decree of A. C. Mitra, Esq., Munsiff of Purulia, dated the 17th of September 1889.

(1) I. L. R., 5 All., 406.

(2) I. L. R., 18 Cal., 368.