
(1905) 07 CAL CK 0008

In the Calcutta High Court

Case No : Appeal from Original Decree No. 60 of 1902

J.J. Guise and Others

APPELLANT

Vs

Ananta Ram Rathi and Others

RESPONDENT

Date of Decision : 20-07-1905

Acts Referred:

Citation : (1905) 07 CAL CK 0008

Final Decision : Dismissed

Judgement

1. The Plaintiffs who purchased the right, title and interest of Rani Mil Kumari in January 1891 in execution of a money decree, have sued the Defendants for arrears of rent for the years 1305 to 1307 on the 8 C. W. N. 174 (1903). 1307 on the basis of an ijara lease granted to them by the said Rani on the 29th November 1875. The rent was Rs. 17,000 a year, but the balance of malikana payable each year after deduction of Government revenue was only Rs. 2,994-7-8. The claim was decreed in a modified form and the only question urged before us in this appeal is whether the Defendants are entitled to claim a setoff for Road and Public Works-cesses paid by them for the years anterior to 1305 without paying Court-fees upon the amount claimed. The Subordinate Judge has allowed the cesses for the years in suit, viz., 1305 to 1307 to be deducted, because they were a payment made out of the rent sued for. But he has refused to consider the claim as regards previous years as no Court fees were paid thereon. It appears from a stipulation in the lease that the Rani owing to personal considerations was entitled to have her malikana free of such deductions and that the cesses were to be brought to account at the termination of the lease. When the Rani's rights passed to the Plaintiffs the special circumstances on which the stipulation was founded ceased to have operation, and then the cesses paid by the Defendants become a demand which the Defendants were entitled to make against the Plaintiffs from the time of their purchase. The debt based upon those payments came into existence prior to the years in suit. Such payments if not barred by limitation might no doubt be set off in the present suit, but as they cannot be treated as part payment of the rents

sued for, but as an antecedent debt they came within the meaning of a set-off. That Court fees must be paid for such a set-off has been held by the High Courts of Allahabad, Bombay and Madras. The contrary opinion expressed by Banerjee, J., in the case of Fakir Chandra Dutta v. Messrs. Gisborne & Co. 8 C. W. N. 174 (1903) was an obiter dictum, and is we believe opposed to the prevailing practice of the mofussil Courts of this Province.

2. The appeal is accordingly dismissed with costs. There is a cross appeal as regards a credit of Rs. 200 for each year in suit which the lower Court has allowed to the Defendants as money paid to one Balabhadra on the barat or requisition of the lessor. Balabhadra had a charge for maintenance against the Rani and obtained a compromise decree, but the decree does not make the money a charge upon the property and therefore the Defendants should have discontinued paying Balabhadra on the Rani's barat so soon as they had notice of the Plaintiffs' purchase, which they had by letter, Ex. E. dated the 7th March 1893. The cross-appeal will therefore be decreed with costs, the hearing fee being assessed at three gold mohurs. The calculation should be made by kists with 12 per cent, interest as in the decree of the lower Court.