
(1910) 04 AHC CK 0012
In the Allahabad High Court

Permanand and Others

APPELLANT

Vs

Jagat Narain

RESPONDENT

Date of Decision : 05-04-1910

Acts Referred:

Citation : 6 Ind. Cas. 162

Hon'ble Judges : Tudball, J;Richards, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal arises out of a suit in which the plaintiffs claimed that an account should be taken between them and the defendant as their agent and a decree might be granted for the amount that should be found due on the taking of accounts. The defendant never denied his agency. He said he was always ready and willing to render an account and in paragraphs 19 and 20 of the written statement, he alleged that there was money due by the plaintiffs to him which he had demanded. The accounts have been taken and on the taking of accounts the Court has found that no money was due to the plaintiffs by the defendants, but there is a sum due by the plaintiffs to the defendant. A decree has been given in favour of the defendant for the amount due. The only point argued in the present appeal is that the defendant not having claimed a set off against the plaintiffs' claim, no decree could be passed in his favour for any money found due to him from the plaintiff on the taking of accounts. In our opinion, this plea is not well-founded. It is true that the plaintiffs in their plaint claimed that a decree might be granted for whatever sum might be found due on the taking of accounts. Nevertheless the plaintiffs' suit was in truth and in fact a~ suit for accounts against an agent. In our opinion such a suit necessarily involves an undertaking by the plaintiff to pay to the defendant any sum that may be found due to the defendant by him on the taking of accounts, and it is unnecessary that the defendant should plead a set-off or counterclaim. We think that the decree of the Court below was quite justified by the provisions of Sections 215 A and 216, Act

XIV of 1882, which was in force at the time of making the decree. In the written statement the defendant expressly stated that on taking of accounts a certain sum would be found due to him. The appellants rely on the ruling in the case of Nan Karay Phaw v Ko Htaw Ah In Our opinion this ruling does not apply. There the defendant denied the partnership and had made an independent claim against the plaintiff. We dismiss the appeal with costs including in this Court fees on the higher scale.