

(1924) 11 CAL CK 0015
In the Calcutta High Court

Radhika Prasad Datta

APPELLANT

Vs

Panchanan Choudhury and Another

RESPONDENT

Date of Decision : 13-11-1924

Acts Referred:

Citation : 87 Ind. Cas. 788

Hon'ble Judges : Ewart Greaves, J;Chakravarti, J

Bench : Division Bench

Judgement

1. This is an appeal by defendant No. 4 against a decision of the District Judge of Murshidabad confirming a decision of the Munsif. The facts shortly stated are as follows. The plaintiffs and the defendants were joint owners of a zemindari. The zemindari was let out in patni and was brought to sale by the zemindars for arrears of putni rent and it was purchased by a third party. The patnidars sued to set aside the patni sale and the sale was set aside and the zemindars were held liable for the costs of the patnidars and the patnidars recovered these costs from some of the zemindars who are the plaintiffs in the present suit and the present suit was brought against defendant No. 4 and the other defendants for contribution in respect of the costs which had been paid by the plaintiffs. Defendant No. 4 had been compelled to pay the costs of the auction-purchaser in the putnidars suit and accordingly he contended in" these proceedings that he was entitled to set-off as against the claim for contribution the sum which he had paid for the costs of the auction-purchaser. The Munsif disallowed the claim for a set-off for reasons which are not very clear but which apparently are related to some question which arose and as to which there is not a definite finding with regard to the withdrawal of the balance of the amount deposited by the auction-purchaser at the time when he purchased the patni. The lower Appellate Court has agreed with the Munsif's decision and has refused to allow the set-off which defendant No. 4 claims. Hence this appeal.

2. Now, in our opinion, defendant No. 4 is clearly entitled to set-off as against the plaintiffs" claim the amount which he has paid to the auction-purchaser

which represents the liability of the plaintiffs in respect of the auction-purchaser's costs and we do not see how this claim of defendant No. 4 can be resisted. No doubt defendant No. 4 put his claim too high. He is only entitled to a set-off in respect of the actual liability of the present plaintiffs for the costs of the auction-purchaser.

3. The appeal is allowed, the decree of the lower Appellate Court is set aside and the case is sent back to the Munsif, in order that he may ascertain the amount to be set-off that is the amount which defendant No. 4 is entitled to set off against the claim in suit upon the lines indicated in this judgment.

4. The appellant will be entitled to his costs of this appeal in proportion to his success.