

(1910) 03 MAD CK 0008
In the Madras High Court

R.M.M. Ramanadan Chetty and Co. and Others	APPELLANT
Vs	
K.M. Abdul Karim Sahib and Others	RESPONDENT

Date of Decision : 03-03-1910

Acts Referred:

Citation : 7 Ind. Cas. 267(1)

Hon'ble Judges : Arnold White, C.J;Sankaran Nair, J

Bench : Division Bench

Judgement

1. In this case the plaintiffs and the 2nd defendant carried on business as partners, and their claim against the 1st defendant is a joint-claim as partners. In his written statement the 1st defendant sets up counter-claims against the members of the partnership individually. Boddam, J., was of opinion that these separate claims could not be set up by way of counter-claim against the joint claim of the plaintiffs. The question turns on the construction of Rule 47 of the Original Side Rules. This rule is taken from Order XIX, Rule 3, of the English Rules of the Supreme Court. It was held in *Manchester and Sheffield Railway Company v. Brooks* 2 Ex. D. 243 : 46 L.J. Ex. 244 : 36 L.T. 103 : 25 W.R. 413, that when two or more plaintiffs sue for a joint-claim, the defendant may under the Judicature Act and Rules, set up as against each individual plaintiff separate counter-claims. The correctness of this decision is questioned in *Lindley on Partnership*, Edition 7, page 331, but the decision would appear to have been accepted generally in England, and we are prepared to follow it here. It is obviously desirable that in order to avoid multiplicity of suits, questions of this character should be disposed of in one action, unless any inconvenience would arise, by their being so disposed of. If any

inconvenience would arise the Court has a discretion under the rule to decline to allow the counter-claims to be set up. We are not prepared to say

that in this case any inconvenience would result from the trial of the claim and the counter-claims in the same suit. It is admitted by the members of

the partnership that there were dealings between the 1st defendant and the plaintiff and the 2nd defendant. This being so we must send the case

back to the Original Side for findings on the 4th and 5th issues. The Judge will receive fresh evidence if he thinks fit to do so. The 1st defendant's

plea of limitation to the plaintiff's claim is not pressed.

2. In compliance with the above judgment the Hon "ble Mr. Justice Wallis in the exercise of the Ordinary Original Civil Jurisdiction of this Court,

submitted the following

3. Mr. Ramasamy Iyer as regards the 3rd counter-claim does not press the defence of limitation on behalf of 2nd to 5th plaintiffs in answer to the

counter-claim and admits the amount of such counter-claims. The 1st defendant waives the costs of the counter-claims in this Court. There is no

agreement as to the costs of the appeal which are for the appellate Court. The result is that there must be finding by consent in favour of the 1st

defendant on all three counter-claims mentioned in para. 8 of 1st defendant's written statement and that they or none of them are barred.

4. The appeal came on for final hearing and the Court delivered the following.

5. On the findings and by consent 1st defendant will get a decree on his counter-claim for Rs. 8,783-9-11 with interest at 12 per cent from date of

written statement, up to date of plaintiff's decree and subsequent interest at 6 per cent. There will be no order as to the costs of the counter-claim

in the Court below. In this Court the 1st defendant will have his costs of the appeal. The Vakil's fee will be calculated on the amount of counter-

claim allowed.

6. Decree in O.S. No. 36 of 1907 will stand.