

(1910) 03 MAD CK 0098
In the Madras High Court

R.M.M. Ramanadan Chetty and Co.

APPELLANT

Vs

K.M. Abdul Karim Sahib and Others

RESPONDENT

Date of Decision : 03-03-1910

Acts Referred:

Citation : (1911) ILR (Mad) 226

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

Bench : Division Bench

Judgement

1. In this ease the plaintiffs and the second defendant carried on business as partners, and their claim against the first defendant is a joint-claim as partners. In his written statement the first 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.

2. 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 (1877)2 Ex. D. 243, 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 disposal 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 first defendant and the plaintiff and the second defendant.

This being so we must send the case back to the Original Side for findings on the fourth and fifth issues. The Judge will receive fresh evidence if he thinks fit to do so. The first defendant's plea of limitation to the plaintiff's claim is not pressed.

3. 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.

FINDING

4. Mr. Ramasawmy Aiyar as regards the third counterclaim does not press the defence of limitation on behalf of second to fifth plaintiffs in answer to the counter-claim and admits the amount of such counter-claims, The first defendant waives the cost 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 findings by consent in favour of the first defendant on all three counter-claims mentioned in paragraph 8 of first defendant's written statement, and that they are none of them barred.

5. This appeal coming on for final hearing after the return of the above findings, the Court delivered the following.

JUDGMENT

6. On the findings and by consent first defendant will get a decree on his counter-claim for Rs. 8,783"-9-II with interest at 12 per cent, from date of written statement up to date of plaintiff's decree and subsequent interest at 8 per cent. There will be no order as to the costs of the counter-claim in the Court below. In this Court the first defendant will have his costs of the appeal. The vakils' fee will be calculated on the amount of the counter-claim allowed.

7. Decree in Original Suit No. 36 of 1907 will stand.