

(1910) 02 CAL CK 0025
In the Calcutta High Court

Umanath Das and Others

APPELLANT

Vs

Monsur Ali Hawladar and Others

RESPONDENT

Date of Decision : 08-02-1910

Acts Referred:

Citation : 5 Ind. Cas. 570

Hon'ble Judges : Woodroffe, J;Harington, J

Bench : Division Bench

Judgement

Harington, J.—This is an appeal on behalf of the plaintiffs against the judgment of the Subordinate Judge who, in giving judgment for the plaintiffs, directed that the defendants should be entitled to set-off a sum of Rs. 77-4-7 1/2 from the money which was found due to the plaintiffs. The action was brought against the defendants as darputnidars for rent of a holding which they held from the plaintiffs, and the circumstances under which they claimed to set-off the Rs. 77 odd arise in consequence of a payment which was made of the entire rent of the putni to the head landlord. The putni was held by the plaintiffs, the defendants and a person named Nojimuddi. The plaintiffs held 8 annas of the putni, and the defendants and Nojimuddi each held a 4 anna share. Now, the entire rent which these three parties were bound to pay to the head landlord amounted to Rs. 309-2-6 and it appears that the defendants and Nojimuddi were compelled to pay that sum to the landlord to save the putni. "When they had done this, they were entitled to recover from the plaintiffs the share which they had paid in excess of the proportion for which they would be liable, namely they were entitled to recover half the sum of Rs. 309 odd, which was the proportion the plaintiffs were bound to pay in respect of their 8 annas share, and when they had recovered that sum it would be shared between them in proportion as they had paid towards the head rent. If they had paid in equal shares, each would be entitled to Rs. 77 odd out of the sum of Rs. 154 odd, and if they had in different proportions, each would be entitled to take his proportion out of the sum they would be entitled to recover from the plaintiffs. That being the state of affairs, the plaintiffs sue the defendants for the rent of that portion of the putni which

they had let to the defendants as darpatnidars, and that rent the defendants are, liable to pay to the plaintiffs. But the defendants say, we are entitled, when we have to pay our rent to the plaintiffs in respect of the darpatni, to deduct that proportion of rent which we are entitled to recover from the plaintiffs in respect of the sum which has been paid to the head landlord by Nojimuddi and ourselves, and so we are entitled to deduct Rs. 77 odd, that is half the excess amount that Nojimuddi and we paid to the head landlord. On the other hand it is contended that the defendants are not entitled to set-off that sum because the respective rights of the defendants and Nojimuddi against the plaintiffs could only be ascertained in a suit for contribution. I think the contention of the appellants is the correct one and I put my view on a very short ground, and that is this: If the defendants are entitled to set this sum off against the sum claimed by the plaintiffs, then it must be a sum for which the defendants would be entitled to sue the plaintiffs, but in this case it is not a sum for which they would be entitled to sue the plaintiffs because the right of suit which they have as against the plaintiffs is jointly with Nojimuddi, as Nojimuddi and the defendants are entitled to sue the plaintiffs for the extra proportion of rent which they paid to the head landlord. In my opinion, the defendants could not have sued the plaintiffs without making Nojimuddi a party to the suit. If that is so, I think, equally they cannot claim to set off as against the plaintiffs a sum for which they could not have sued without making another person a party to the suit. On this ground I think the decision that is appealed from is wrong to the extent of its allowing this set off.

2. The result is that, in my opinion, the appeal should be allowed, and the judgment and decree of the Court below should be varied by a direction that the defendants be not entitled to set off the sum of Rs. 77-4-7 1/2 against the sum due to the plaintiffs. The plaintiffs are, of course, entitled to interest also on this amount of Rs. 77 odd which has been disallowed by the lower Court from the date of the alleged payment.

3. The appellants are entitled to the costs of the appeal.

Woodroffe, J.

4. I agree.