

original court can make such further inquiry as may be requisite, it is competent to the appellate court to do so under the powers conferred upon it by section 37 of Act XXIII. of 1861

1863
Ahmed
Nanubhai
v.
Khasaji
Karimbhai

In this case the Commissioner's report is dated the 25th January 1868, but was not filed until the 30th of April following, the day on which the suit was decided, so it is possible that the defendant had no opportunity of making a formal objection to the report, even if it was incumbent on him to do so.

The question then, is, had the Lower Appellate Court reason to be dissatisfied with the proceedings of the Commission. This is impossible to ascertain from the judges minute; for, although he has entered into a consideration of the accounts at great length, he does not say why he found it necessary to do so; nor does he refer to the report in any way whatever, and his description of the state of the accounts between the parties is wholly unintelligible. We are therefore necessitated to remand the case, in order that the Judge may find:

(1) If there is reason to be dissatisfied with the proceedings of the Commission; and (2) if so, that he may, either himself, or through a Commissioner, investigate the accounts of both parties, and pass a fresh decree on the merits of the case. Costs to follow the final decision.

Decree reversed and case remanded.

Referred Case.

Aug. 17

HAYATKHA Plaintiff.
ABDULAKHA Defendant.

Set-off—Decree

Held that a defendant may deny the plaintiff's claim and also plead a set-off, and may obtain a decree for it, although no sum may be found to be due to the plaintiff.

The following case was submitted for the decision of the High Court by Gopalrav Hari Deshmukh Judge of

1869
Hayatkha
Abdulakha

the Court of Small Causes at Ahmedabad, under Sec. 22 of Act XI. of 1865:—

“The plaintiff has sued the defendant for a sum of money, which he alleges he had lent to the defendant. The defendant denies that he ever borrowed from the plaintiff; but, on the contrary, avers that he had lent him Rs. 58. The plaintiff objects to the set-off, stating, that as the defendant has entirely denied the claim, he cannot plead a set-off.

“The question is whether or not a defendant, who entirely denies the claim of the plaintiff, can plead a set-off against him, and obtain a decree for it.

“My opinion is, that the defendant may plead a set-off and obtain a decree for it, though he entirely denies the truth of the plaintiff’s claim.”

Per Curiam (Couch, C. J., and Warden, J.):—The Court is of opinion that a defendant may deny the plaintiff’s claim and also plead a set-off, and may obtain a decree for it, although no sum may be found to be due to the plaintiff.

Aug. 17

Special Appeal No. 226 of 1869.

LAKSHMIBAI, widow of KALYANRAV

Anant..... Appellant.
Jayram Hari, Itavji Shripat, and Ganpatrav

Mahipat..... Respondents.

Hindu Law—Widow—Gotraja Sapinda—Samanodakas

According to the Hindu Law obtaining in Western India, the wives of all Gotraja Sapindas and Samanodakas have rights of Inheritance co-extensive with those of their husbands immediately after whom they succeed.

This was a Special Appeal from the decision of Arthur St. John Richardson, Judge of the District of Ahmednagar, in Appeal Suit No. 285 of 1868, amending the decree of Krishnaji Vishnu Limaye, Principal Sadr Amin of Ahmednagar.