

## ALLAHABAD HIGH COURT

Lallu Singh

Vs

Gur Narain

(Sulaiman, J.)

10.12.1925

### JUDGMENT

**Sulaiman, J.**

1. This is an execution first appeal by the defendant judgment-debtor arising out of a suit in which the plaintiff obtained a decree for future mesne profits from the date of the suit' to be ascertained in the execution department. The defendant was in wrongful possession of the plaintiff's village properties and made realizations. During the period subsequent to the institution of the suit he made collections of arrears of rent for the past periods and also rents for the current year. The learned Subordinate Judge has held that under the decree the plaintiff is entitled to recover whatever rents have been realized by the judgments debtor in the years in question irrespective of the fact whether those were arrears of rent for previous years or whether they were on account of the current year. In appeal before me it is contended that only such arrears as were collected by the defendant for the period subsequent to the institution of the suit should have been decreed. It is urged that there was no decree for the previous years and the defendant, therefore, was entitled to appropriate those rents even though he collected them subsequently during the year of the pendency of the suit.

2. Under Section 2(12), Civil P.C., the expression 'mesne profits' of properties is defined as being profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received therefrom together with interest on such profits, It is clear therefore that the decree-holder is entitled to whatever profits the defendant in wrongful possession did actually receive. Had he not been in wrongful possession he would not have been allowed to realize the arrears of rent. The total amount realized by him during the period is, therefore, the amount which he actually received as profits of the property. Furthermore, it may be pointed out that with regard to collections in villages the word "profits" has always been intended to include realizations of arrears for past years as well as for current years In the case of Nand Kishore v. Ram Rattan [1887] A.W.N. 250, Mahmood, J., pointed out that under the Rent Act the word "profits" meant "not only rent in respect of the years to which the rent relates but also to such arrears of rent as are actually realised by the lambardar during the year to which such

suit may relate." The same conception of profits is the basis of the decision of the Full Bench Case of *Sheo Ghulam v. Salig Ram*<sup>1</sup> where collections of arrears for past years were deemed to be a part of the profits for the year during which they were collected so as to give a fresh start of limitation to co-sharers. The same meaning is also attached to "profits" in Article 109, Lim. Act.

3. I am accordingly of opinion that the view taken by the learned Subordinate Judge was correct. I dismiss this appeal with costs including in this Court fees on the higher scale.

Cases Referred.

1AIR 1924 All 481