

# ALLAHABAD HIGH COURT

Kumar Jagdish Chandra

Vs.

Bulaqi Das

Second Appeal No. 110 of 1956, against judgment of V.G. Oak, J. in Ex. S.A. No. 415 of 1950

(O.H. Mootham, C.J. and Raghubar Dayal, J.)

25.01.1956. 13.08.1958

## JUDGMENT

### **Raghubar Dayal, J**

1. This is a Special Appeal against the judgment of Mr. Justice Oak allowing the execution second appeal by the respondents-decree-holders.
2. Kunwar Jagdish Chandra, appellant, the owner of the plot in dispute leased it to Buiaqi Das and Narain Das respondents for a term of 11 years on 31-10-1930. The respondents sub-leased the plot and the sub-lessee constructed a building on it. Later on the appellant purchased the materials of that building when sold in execution of a decree and took possession of the plot and the building. In 1933 the respondents instituted the civil suit out of which has arisen this appeal for the recovery of possession and mesne profits against Jagdish Chandra, appellant. On 2-1-1935 the suit was decreed for possession as well as for mesne profits and the decree directed payment of pendente lite and future mesne profits at the rate of Rs. 30/- per mensem until delivery of possession.
3. Jagdish Chandra filed an appeal against that decree and the decree-holders filed a cross-objection. The appeal was dismissed. The cross-objection was allowed to the extent that the rate of mesne profits was enhanced by Rs. 5/- per mensem. A second appeal by Jagdish Chandra was dismissed summarily by this Court sometime in 1939.
4. The decree was then put in execution and Jagdish Chandra filed an objection with regard to the amount payable under the decree. The Court ordered that the amount for which execution shall be carried out shall be Rs. 3671-8-6 as due upto 16-11-1944. He also filed an appeal against the amount determined by execution court, and contended that the mesne profits upto 1944 could not be allowed. The appellate court partly allowed the appeal directing that the mesne profits would

be recovered under the decree for a period of three years only from the date of the decree of the High Court. Bulaqi Das who was one of the decree-holders filed an execution second appeal on the ground that the appellate court was wrong in holding that mesne profits could be recovered for a period only to three years from the court's decree. Jagdish Chandra filed a cross-objection to the effect that no decree for mesne profits could be passed for the period subsequent to the expiry of the lease in favour of Bulaqi Das appellant and which took place on the 31st of October 1941. The learned Judge allowed the appeal of Bulaqi Das and dismissed the cross-objection of Jagdish Chandra. Jagdish Chandra has now filed this Special Appeal and prays that it be decreed and that the respondents are entitled to recover mesne profits only for a period of three years from the 2nd January 1935, the date of the decree of the trial court.

5. Two points are raised by the appellant One is that the decree in execution, though saying that mesne profits were payable upto the delivery of possession, is really a decree for the payment of mesne profits in accordance with the provisions of R. 12, O. 20 of the Code of Civil Procedure and is therefore a decree for payment of mesne profits up to three years from the date of the decree as no possession was actually delivered to the decree-holder. The second point is that no mesne profits can be recovered after the date on which the decree-holder ceased to be lessees and consequently ceased to be entitled to the possession of the land in suit. It is contended for the respondents that the execution Court cannot go behind the decree, that the terms of the latter are clear and allow mesne profits up to the delivery of possession, and that therefore the respondents are entitled to recover mesne profits upto the date of the delivery of possession.

6. We are of opinion that the contention for the respondents must fail and that the appeal must succeed in part. Order 20, R. 12 is in these terms

"(1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree -

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until -

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

Clause (c) of Sub-rule (1) contemplates a decree directing an inquiry as to mesne profits from the institution of the suit until one of the three events mentioned in sub-clauses (i), (ii) and (iii) whichever of them occurs first Sub-rule (2) contemplates the passing of a final decree in respect of mesne profits in accordance with the result of that inquiry.

The final decree contemplated will state the amount of mesne profits which have to be paid by the judgment-debtor to the decree-holder, and therefore will have to take into consideration the date upto which mesne profits are to be paid. Such date will be either the date of delivery of possession to the decree-holders, or the date of relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or the date of the expiration of three years from the date of the decree, whichever of these alternative dates happen to be the earliest. The decree which has been passed in the present case has to be construed according to law, and has therefore, in our opinion, to be construed to mean that mesne profits are recoverable by the decree-holders upto the date of the delivery of possession, which means, in the context of R. 12, the actual delivery of possession or the notional delivery of possession through relinquishment or through the expiration of three years from the date of the decree. It cannot in our view be interpreted as a decree for the realization of the mesne profits till the actual delivery of possession which, in the present case, may never take place. We cannot think that the Court contemplated that the decree-holders by failing to take action to obtain possession could create a right in themselves to recover mesne profits up to an imaginary date for the delivery of possession. Such an interpretation of this decree would mean that the respondents and their successors-in-interest can recover mesne profits from the appellant and his successors-in-interest in perpetuity. The decree is not to be given such a far-reaching interpretation.

7. It is to be observed that manse profits really represent the loss which a decree-holder is assumed to suffer on account of the wrongful occupation of the judgment-debtor. If the right of the decree-holder to possession comes to an end his right to mesne profits automatically must also come, to an end. Mesne profits are defined in Clause (12) of Section 2 of the Civil Procedure Code thus :

" 'mesne profits' of property means those profits which the persons in wrongful possession of such property actually received or might with ordinary diligence have received there from, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession."

The possession of an ordinary judgment-debtor will not be wrongful after the lapse of such time which bars the decree-holder to recover possession, Section 28 of the Limitation Act provides :

"At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

This consideration also makes it incumbent on this Court to put a reasonable interpretation on the decree passed by the trial court and confirmed by the appellate court.

8. Learned counsel for the appellant has referred to certain cases in support of his contention. To case to the contrary has been cited by learned counsel for the respondents. Reference was made

by him to certain cases which lay down that an execution court cannot ordinarily go behind the decree. This is a proposition which is not open to question.

9. In *Uttamram v. Kishordas*<sup>1</sup>, a decree was passed in 1878 providing for possession of certain land with mesne profits (to be ascertained in execution by the Subordinate judge) of all of the said land sued for in the plaint, such mesne profits to be computed from the date of possession being given to the defendants. Nothing was said in the decree as to the date down to which the mesne profits were to be awarded. The decree-holder by his execution application presented in 1881 claimed mesne profits from the date of possession in 1870 upto the date of the delivery of possession.

The Court awarded mesne profits upto 1881 inclusive. The decree-holder obtained possession actually on the 19th of September, 1882 and applied in 1897 for the ascertaining of mesne profits for the year 1881-82, that is the period between the date of the application in 1881 and the date of obtaining possession in 1882. This application was rejected by the Subordinate Judge and the appeal there from was dismissed by the High Court. It was observed by Parsons, J., at page 153 :

"I do not intend to discuss these difficulties and see whether or not they are unsurmountable, because there is an objection taken here which seems to me to be absolutely fatal to the application. It is that this Court by its decree did not award to the appellants' father the mesne profits now asked for namely, the profits for the year 1881-82, because it could not award mesne profits for a period longer than three years from the date of the decree under the provisions of Section 211 of the Code of Civil Procedure 1877, which was then in force ..... In the decree in the present case no period was mentioned, down to which mesne profits were awarded, but we cannot construe it as giving the plaintiffs profits for a period longer than what the law allowed the Court to give. The decree may be supplemented by the law on a point upon which it is silent, but we cannot introduce into it a provision which would be contrary to the law and ultra vires on the part of the Court pronouncing it."

Ranade, J., observed at page 155 :

"Lastly, there can be no doubt that under Section 211 of Act X of 1877, which governed the order under the decree, there was a three years' limit from the date of decree within which mesne profits might accrue, if that event took place earlier than the delivery of possession. As the decree was silent, this provision of the law must be held to have been in the intention of the parties. This three years' limitation also bars the present claim for the profits of 1882."

This case is distinguishable from the present case where the decree directs payment of mesne profits till the delivery of possession for it is good authority for the proposition that the question of the date up to which mesne profits are to be calculated is a question of construing the decree, and that the court cannot pass a decree for mesne profits which would be contrary to law.

<sup>1</sup> ILR 24 Bom 149

10. The next case is that of *Narayan Govind v. Sono Sadshiva*<sup>2</sup>, This case is directly in point. In this case the decree dated 19-9-1884, directed the plaintiff to receive mesne profits from 1-9-1880 to the date of delivery of possession, the amount to be fixed in execution of the decree. It was contended that no more than three years mesne profits could be held to be subject to the limitations laid down in Section 211 of the Civil Procedure Code, 1882 which corresponds to Order 20, R. 12 of the present Code. The District Judge held that he could not go behind the decree. On appeal, it was observed by Jenkins, C.J., at p. 349 :

"But we may point out that, as held by the Full Bench in *Puran Chand v. Roy Rahda Kishan*<sup>3</sup>, the proceedings for the purpose of ascertaining the amount of mesne profits are a continuation of the original suit, and the Court in so ascertaining the amount is bound by the provisions of Section 211. It is true that possession has not yet been delivered to the decree-holders. But this fact does not prevent the clear provisions of the law being followed."

In the result the Court varied the decree of the lower court by limiting the mesne profits to three years subsequent to 12-1-1887, the date of the High Court decree. This case is authority for the view which we are disposed to take, namely that the present decree must be construed as a decree awarding mesne profits upto three years from the date of the decree.

11. These cases were followed in *Trailokya Nath Chaudhury v. Jogendra Nath Ray*<sup>4</sup>, The facts of this case are similar to those in Uttamaram's case, ILR 24 Bom 149. The suit was decided on 20-2-1890 and the decree directed that the mesne profits due to the plaintiffs be ascertained in execution of the decree. This decree was affirmed by the High Court on 25-7-1898. The Court below granted mesne profits upto 16-6-1906, the date of the restoration of possession to the decree-holder. It was contended by the judgment-debtor in the High Court that mesne profits could be allowed only for three years from the date of the decree that is 25-7-1898. Maclean, C.J., observed at page 1019, with reference to Section 211 :

"So far as I am aware, this is the only section in the Code, which enables the Court to allow mesne profits from the date of the institution of the suit upto the time of the delivery of possession. The language of the section appears to me to be clear. It says "until the delivery of possession to the party, in whose favour the decree is made, or until the expiration of three years from the date of the decree, whichever event first occurs ..... We must give effect to the clear language of the Legislature." The court accordingly held that the plaintiffs were entitled to mesne profits for three years from the date of the decree, namely, 25-7-1898.

12. In *Godavarti Raja v. Ramachandraswami Varu*<sup>5</sup>, the decree was one for possession and mesne profits until delivery. It was passed on 21-2-1934. Mesne profits were claimed for seven

years from 1932. It was observed at page 355 :

<sup>2</sup> ILR 24 Bom 345    <sup>4</sup> ILR 35 Cal 1017

<sup>3</sup> ILR 19 Cal 132    <sup>5</sup> AIR 1943 Mad 354

"Under Order 20, Rule 12(1)(c)(iii), Civil Procedure Code, mesne profits can only be decreed for three years after the date of the decree ..... The same interpretation must be placed on the present decree and we must read it as giving the decree-holder a right to mesne profits to delivery of possession subject to the limit of three years."

13. This case also supports our view. We are of opinion that the decree in the present case should be construed as an award of mesne profits up to three years from the date of the decree in view of Rule 12(1)(c), O. 20.

14. The date of the decree for purpose of computing this period of three years will be the date of the final decree which will be the decree of the High Court. The three years will, therefore, be counted from the date of that decree and not from the date of the decree of the trial court : see *Raja Bhup Indar Bahadur Singh v. Bijai Bahadur Singh*<sup>6</sup>,

15. The three years from the date of the decree of the High Court will extend upto some date in 1942. The lease in favour of the respondents however came to an end on 31-10-1941. Their rights as lessees then ceased. They cannot, therefore, be held entitled to mesne profits subsequent to that date. On the determination of the lease the possession of the appellant subsequent to the determination of the lease will be lawful pos-session and therefore he cannot be liable for mesne profits subsequent to that date. It must be held that notionally on 1-11-1941 the appellant obtained possession of the land in suit in his right as owner and that his possession thereafter was not as a trespasser liable to account for the use and occupation of the land to the respondents. We are therefore of opinion that the mesne profits which may be claimed by the respondents from the appellant are mesne profits upto 31-10-1941 even though this, date falls within three years from the date of the final decree in their suit.

16. In the result we allow this appeal in part and order that Kunwar Jagdish Chandra, the appellant, is liable for mesne profits to the respondents at the rate of Rs. 35/- per mensem up to 31-10-1941. In the circumstances of this case we are of opinion that the parties should bear their own costs of these appeals. We order accordingly.

Appeal allowed in part.

<sup>6</sup>27 Ind App 209 (PC)