

APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice Sharfuddin.

1912
 May 17.

PANCHURAM TEKADAR

v.

KINOO HALDAR.*

Mesne profits—Jurisdiction—Suit for recovery of possession with mesne profits—Mesne profits assessed in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court.

A suit for recovery of possession of certain lands with mesne profits from the date of dispossession up to the date of restoration of possession was brought in the Munsiff's court. It was decreed together with the mesne profits claimed, and the Court directed that the amount of mesne profits would be determined in the execution proceedings. The decree having been affirmed on appeal, the decree-holder applied to the executing Court for ascertainment of mesne profits. The total amount of mesne profits ascertained by the Munsiff was Rs. 1,630-8 including interest. On an objection taken by the judgment-debtor that the executing Court being a Munsiff, was not entitled to award mesne profits of a higher amount than Rs. 1,000 :

Held, that the executing Court had jurisdiction to award the mesne profits ascertained in the present case.

Rameswar Mahton v. Dilli Mahton (1) followed in principle.

Bhupendra Kumar Chakrabarti v. Purna Chandra Bose (2) distinguished.

SECOND APPEAL by the judgment-debtor, Panchuram Tekadar.

This appeal arose out of an application for ascertainment of mesne profits in the execution proceedings. It appeared that one Kinoo Haldar brought a suit for recovery of possession of certain

* Appeal from order, No. 186 of 1911, against the order of Ashutosh Sarkar, Subordinate Judge of Khulna, dated Jan. 6, 1911, confirming the order of Akhoy Kumar Bose, Munsif of Khulna, dated Dec. 2, 1909.

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lands with mesne profits from the date of dispossession up to the date of delivery of possession in the court of the Munsif at Khulna on the 6th of March, 1907. The plaintiff alleged that he had been dispossessed on the 23rd of Chait, 1311 B. S., and mesne profits were claimed for the years 1312 to 1315 B. S. The learned Munsif decreed the plaintiff's suit together with mesne profits claimed, and he directed that the amount of mesne profits would be determined in the execution proceedings. This order having been affirmed on appeal, the decree-holder applied to the executing Court (Munsif's Court) for ascertainment of mesne profits decreed. The Court held that the decree-holder was entitled to recover mesne profits for 1312, 1313 and 1314, but was not entitled to any mesne profits for 1315; and the total amount of mesne profits so ascertained was Rs. 1,630-8 inclusive of interest. The judgment-debtor objected that the executing Court had no jurisdiction to allow mesne profits higher than its pecuniary jurisdiction, *i.e.*, Rs. 1,000. This objection being overruled, an appeal was preferred by the judgment-debtor to the Subordinate Judge, who affirmed the decision of the first Court. The judgment-debtor thereupon preferred an appeal to the High Court.

Babu Sarat Chandra Ghose, for the appellant, contended that the Munsif had no jurisdiction to award mesne profits higher than one thousand rupees, which is the pecuniary jurisdiction of the Court; *Bhupendra Kumar Chakrabarti v. Purna Chandra Bose* (1).

Babu Jadu Nath Kanjilal, for the respondent. The case cited by the other side is distinguishable. In that case the value of the claim for mesne profits

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was much above Rs. 5,000, and this sum not only exceeded the pecuniary jurisdiction of the executing Court, but, if allowed, a difficulty would have arisen as to the *forum* of the appeal. There could be no appeal from the decision of the Munsif direct to the High Court. In the present case no such difficulty arises. The case of *Rameswar Mahton v. Dibi Mahton* (1) supports my contention.

Babu Sarat Chandra Ghose, in reply.

BRETT AND SHARFUDDIN JJ. This is an appeal against an order passed by the lower Appellate Court confirming an order made by the Court of first instance in certain execution proceedings relating to mesne profits. It appears that the respondent in the present appeal obtained a decree against the present appellant for recovery of possession of a certain piece of land with mesne profits. It is alleged that the plaintiff respondent had been dispossessed on the 23rd Chait 1311, and mesne profits were claimed for the years 1312 to 1315. The suit was instituted on the 6th March 1907 in the Munsif's Court, and a decree was obtained by the plaintiff for recovery of possession of the land in suit, together with mesne profits, from the date of dispossession up to the date of the restoration of possession, and it was directed that the amount of mesne profits would be determined in the execution proceedings. The decree was appealed against, but it was confirmed. The execution proceedings for the purpose of determining the amount of mesne profits then commenced, and as a result it was determined that the plaintiff was entitled to recover mesne profits for 1312, 1313 and 1314, but was not entitled to any mesne profits for

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1315, because during that year he had himself taken away the crops on the land. The total amount of mesne profits so ascertained was Rs. 1,630-8 which sum included interest amounting to Rs. 294.

An appeal was preferred against the decision of the executing Court allowing mesne profits to the plaintiff to the extent of that sum, and in support of it various points were taken which also had been argued before the court of first instance. For the purposes of this appeal, the only point which it is necessary for us to consider is that urged on behalf of the judgment-debtor, the present appellant, namely, that the executing court being a Munsif's Court was not entitled to award mesne profits of a higher amount than Rs. 1,000, that being the ordinary pecuniary jurisdiction of such Court. In support of that contention, reliance was placed on the case of *Golap Singh v. Indra Coomar Hazra* (1). Both the Courts of first instance and the lower Appellate Court held that that case had no application whatever to the facts of the present case, that being a suit brought for accounts, and this High Court having held in that case that it was the duty of the plaintiff to ascertain approximately before instituting the suit the amount which he claimed to be due on taking accounts so as to determine the court in which the plaint should be filed. In that case the sum which was found to be due by the Court exceeded Rs. 8,000. In the present case, both the lower Courts relying on the decision of this Court in the case of *Rameswar Mahton v. Ditu Mahton* (2) were of opinion that, under the provisions of section 211 of the old Code of Civil Procedure, which corresponds with Order XX, rule 12 of the new Code, the Munsif's Court had jurisdiction in execution of the decree to award as mesne profits the sum allowed.

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The judgment-debtor has appealed to this Court, and in support of the appeal the main contention which has been advanced is that the lower Courts erred in holding that the Munsif's Court as a Court of execution had power to award to the plaintiff a decree for mesne profits in excess of Rs. 1,000. In support of this contention reliance is placed on the decision of this court in the case of *Bhupendra Kumar Chakrabarti v. Purna Chandra Bose* (1). We have read through the judgment of this Court delivered in that case, and in our opinion the facts of that case and the grounds which influenced the decision of the learned Judges in that case are very distinct from the facts of the present case. There the suit was to recover possession of land valued at Rs. 686-8 and mesne profits valued at Rs. 200 up to the date of the institution of the suit, and mesne profits from the date of the institution of the suit up to the date of the recovery of possession, to be ascertained in execution. The suit was decreed in favour of the plaintiff for recovery of possession of the land claimed, and also for mesne profits claimed, the amount to be determined in execution proceedings. When execution proceedings were taken, the claim for mesne profits *pendente lite* was laid at over Rs. 60,000. It does not appear in that case that any mesne profits were, in fact, ascertained, but on appeal to this Court, it was held that the Munsif had not jurisdiction to entertain the claim for mesne profits *pendente lite* for such a large amount. The learned Judges in that case pointed out that there were two weighty and obvious reasons why the Munsif should not be allowed to exercise jurisdiction, and why the rule laid down in the case of *Rameswar Mahton v. Dilu Mahton* (2) could not possibly be extended to that case. The two reasons were, *first*, that the value

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of the claim for mesne profits *pendente lite* which the decree-holder invited the Court to investigate was much in excess of the value of a suit which the Munsif was generally competent and specially authorised to try, and, *secondly*, that if the Munsif investigated the claim, there would be insuperable difficulty as to the *forum* of the appeal, which could not be either the Court of the District Judge who could hear appeals only in suits of which the value did not exceed Rs. 5,000 or this Court, and because the Legislature never contemplated an appeal direct from the decision of the Munsif to the High Court. For these reasons, the learned Judge held that the Munsif could not entertain the application for investigation of mesne profits *pendente lite*, as the claim was laid at over Rs. 60,000. In the present case the claim was not laid at anything like that sum, and, in fact, the amount was only ascertained in the course of the execution proceedings by a Commissioner specially appointed for that purpose. In the present case the amount of mesne profits ascertained does not exceed Rs. 5,000 or, in fact, approach near that amount, and no question as to the *forum* of appeal arises. Furthermore this is not an appeal, as the case of *Bhupendra Kumar Chakrabarti v. Purna Chandra Bose* (1) was, against an application to the Munsif to investigate the mesne profits, but is an appeal against an award of mesne profits made by the Munsif in execution of a decree which has become final, and which investigation appears to have been conducted without any objection raised on behalf of the appellant. It was only after the amount of the mesne profits had been ascertained that the objection was taken that the Munsif had no jurisdiction to award mesne profits in excess of Rs. 1,000. In our opinion, therefore, the

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ruling, on which the learned pleader for the appellant relies, has no application whatever to the facts of the present case. The principles laid down by this Court in the case of *Rameswar Mahton v. Dilu Mahton* (1) which have been followed by the lower Courts appear to us, on the other hand, to be fully applicable. In that case the learned Judge pointed out that the amount of mesne profits to be awarded up to the date of the delivery of possession, which the decree-holder would be entitled to recover, would be dependent not on his action, but on the opposition which the judgment-debtor might be able to offer to the delivery of possession to him, and it was considered that it was neither the intention of the law, nor would it be right, that the decree-holder should be deprived of his rightful profits or driven to a subsequent suit to recover the amount simply in consequence of opposition of the judgment-debtor. The learned Judge also pointed out that in most cases, where a suit is brought for recovery of possession and mesne profits, the Court would not be in a position at the time of the institution of the suit to say whether it had or had not jurisdiction until the enquiry as to the amount of the mesne profits had been completed. No doubt there is in this case an opinion expressed that where mesne profits are claimed prior to the institution of the suit, such profits and the value of the property in suit should not exceed the pecuniary jurisdiction of the Court trying the suit, but in the present case this question does not appear to have been raised in any of the lower Courts, nor in fact was it raised at first when the appeal was argued, and it was only as an after-thought that the learned pleader for the appellant suggested that the mesne profits for 1312 and 1313, together with the value of the property

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in suit, would exceed Rs. 1,000. We have not the materials before us in this appeal to enter into that question and decide it, even if we were prepared to do so. Certainly, if that question had been raised in any of the lower Courts, it would have been open to the decree holder to determine whether or not he would relinquish any part of his claim for mesne profits prior to the institution of the suit, so as to bring the claim for mesne profits and recovery of possession within the pecuniary jurisdiction of the Munsif. As the facts at present stand before us, it is not possible for us to say that the contention is correct that the mesne profits claimed prior to the institution of the suit with the value of the property exceed Rs. 1,000. If the judgment-debtor relied on the contention now advanced before us, it was his duty to have taken the objection in the Munsif's Court or in the Court of first appeal, and not to advance it as a sort of last argument in this Court in second appeal. In our opinion, the reasons given by the learned Judges in the case of *Rameswar Mahton v. Dilu Mahton* (1) apply fully to the facts of the present case, and we are of opinion that it was with the object of allowing a plaintiff to recover the mesne profits claimed in a suit for recovery of possession of land after the institution of the suit, without being driven to a subsequent suit, that the provisions of section 211 of the old Code, which are now reproduced in rule 12 of Order XX of the new Code, were enacted. In our opinion, the view taken by the lower Courts is correct. The judgment and decree of the lower appellate Court are, therefore, confirmed, and the appeal is dismissed with costs.

S. G. G.

Appeal dismissed.

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