APPELLATE CIVIL.

Before Mookerjee and Teunon JJ.

1910

Sep. 6.

BHUPENDRA KUMAR CHAKRAVARTY

v.

PURNA CHANDRA BOSE.*

Jurisdiction—Court of limited pecuniary jurisdiction—Mesne profits amounting to Rs. 60,000, antecedent to suit and pendente lite, whether can be investigated by Munsif—Civil Procedure Code (Act XIV of 1882) ss. 50, 211, 212—Civil Courts Act (XII of 1887) ss. 7, cl. (1), 18.

When a plaintiff institutes his suit for possession and mesne profits antecedent to the suit in a Court of limited pecuniary jurisdiction, he may be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit.

In fact in such a case if the plaintiff subsequently put forward a claim in excess of the jurisdiction of the Court, he may be justly required to remit the excess because he had with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction.

Golap Singh v. *Indra Kumar Hazra* (1) followed.

Sudarshan Dass v. *Rampershad* (2) dissented from.

But mesne profits antecedent to the suit and mesne profits *pendente lite* stand on very different grounds.

A Munsif cannot entertain an application for investigation of mesne profits *pendente lite* when the claim was laid over Rs. 60,000.

The proper course to follow was to direct the return of the plaint in so far as it embodied a prayer for assessment of mesne profits from the institution of the suit to the date of delivery of possession, for presentation to the Court of competent pecuniary jurisdiction, *i.e.*, the Court of the Subordinate Judge.

Rameswar Mahton v. *Dilu Mahton* (3) distinguished.

* Appeal from Appellate Order, No. 209 of 1910, with Rule No. 3698 of 1910, against the order of W. H. H. Vincent, District Judge of 24-Perganas, dated March 19, 1910, confirming the order of Sarada Prasad Banerjee, Munsif of Baruipur, dated Dec. 22, 1909.

(1) (1909) 13 C. W. N. 493; 9 C. L. J. 367. (2) (1910) 7 All. L. J. R. 963.
(3) (1894) I. L. R. 21 Calc. 550.

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SECOND appeal by Bhupendra Kumar Chakravarty, the judgment-debtor.

The plaintiff in the case out of which this appeal arose, sued the defendants for possession of certain land valued at Rs. 686-8 and mesne profits and obtained a decree, the value of the mesne profits being left for decision in execution. The suit was brought in a Munsif's Court. The decree-holder then applied in that Court for ascertainment of mesne profits valuing the same at Rs. 75,510. The Munsif held he had unlimited jurisdiction to assess subsequent mesne profits, and, on appeal, the learned District Judge of Alipore upheld his order. Thereupon, the judgment-debtor preferred this appeal to the High Court.

Babu Mahendra Nath Roy and *Babu Shiva Prasanna Bhattacharjee*, for the appellant.

Babu Biswanath Bose, for the respondent.

Cur. adv. vult.

MOOKERJEE AND TEUNON JJ. This appeal is directed against an order made in course of proceedings in execution of a decree in a suit for recovery of possession of land and mesne profits. The respondent commenced his suit on the 12th April 1902 in the Court of the Munsif at Baruipur. His claim, valued at Rs. 886-8, was composed substantially of three parts, namely, *first*, for recovery of possession of about 100 bighas of land valued at Rs. 686-8 which was stated to be the price paid by him to his vendor on the 24th March 1899; *secondly*, mesne profits from the date of dispossession on the 12th April 1899 to the date of the institution of the suit, valued approximately at Rs. 200; and, *thirdly*, mesne profits from the date of institution of the suit up to the date of recovery of possession in execution of the decree to

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be made in the suit. No objection was taken by the defendant to the valuation of the suit, although the claim was contested upon the merits in every particular. On the 27th November 1905, the Munsif made his decree in favour of the plaintiff. This decree entitled the plaintiff to recover possession of the land. As regards the amount of mesne profits, the Munsif left them to be determined in execution. Upon appeal by the defendant, this decree was affirmed by the Subordinate Judge on the 8th February 1907. Upon appeal to this Court, the decree of the Subordinate Judge was confirmed on the 17th August 1908. Meanwhile the decree-holder had executed his decree and recovered possession of the land on the 15th July 1907 On the 9th January 1909, the decree-holder applied to the Munsif for assessment of mesne profits. In this application he claimed the mesne profits for nearly a period of ten years. The claim was laid at Rs. 3,750 per year for the first six years and Rs. 6,300 per year for the remaining four years. The aggregate claim inclusive of interest amounted to Rs. 75,510. As soon as this application was presented, the judgment-debtor objected that the Munsif had no jurisdiction to make a decree for any sum in excess of what taken with the value of the land would make up Rs. 1,000 which was the statutory limit of the pecuniary jurisdiction of the Munsif. As this difference amounted to Rs. 313-8 the judgment-debtor offered to deposit the amount in Court. The Munsif, thereupon, held that he had jurisdiction to award mesne profits for any sum that might be found due, even though it exceeded the limit of his pecuniary jurisdiction, provided that such sum was awarded on account of the mesne profits between the institution of the suit and the delivery of possession in execution of the decree. As regards mesne profits antecedent to the suit, the Munsif did

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not express any opinion as to the amount up to which he was competent to make an award. The judgment-debtor then appealed to the District Judge who has affirmed the order of the Munsif. The judgment-debtor has now appealed to this Court, and on his behalf the decision of the Court below has been assailed on the ground that the Munsif, as a Court of limited pecuniary jurisdiction, cannot make a decree more than Rs. 313-8 (the difference between Rs. 1,000 the limit of the pecuniary jurisdiction of the Munsif and Rs. 686-8 the value of the land). In support of this proposition reliance has been placed upon the decision of this Court in *Golapsingh* v. *Indra Kumar Hazra* (1). This position has been disputed on behalf of the decree-holder, and it has been argued that even if it could be maintained in respect of the mesne profits antecedent to the institution of the suit, it could not be supported in respect of the mesne profits *pendente lite* in view of the decision of this Court in the case of *Rameswar Mahton* v. *Dilu Mahton* (2). The question raised is one of some nicety and its solution must ultimately depend upon the true effect to be attributed to the provisions of the Bengal Civil Courts Act of 1887 and the Civil Procedure Code of 1882.

Section 18 of Act XII of 1887 provides that the jurisdiction of the District Judge and the Subordinate Judge shall, subject to the provisions of section 15 of the Civil Procedure Code of 1882, extend to all original suits for the time cognizable by the Civil Courts. Section 19, sub-section (*1*) then provides that the jurisdiction of a Munsif shall extend to all like suits of which the value does not exceed Rs. 1,000. Sub-section (*2*) of the same section provides that in certain

(1) (1909) 9 C. L. J. 367; 13 C. W. N. 493.

(2) (1894) I. L. R. 21 Calc. 550.

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cases, a Munsif may be invested with jurisdiction to try suits not exceeding in value Rs. 2,000. Section 21 then provides that appeals from any decree of the Subordinate Judge lie to the District Judge in all cases in which the value of the suit does not exceed Rs. 5,000. In cases in which the value exceed Rs. 5,000 the appeal lies to the High Court. Appeals from the decrees of the Munsif lie to the District Judge. The policy of the Legislature as indicated by these provisions is obvious. Suits of which the value exceed Rs. 1,000 or in certain instances Rs. 2,000 shall be tried by a Subordinate Judge. If the value of the suit exceed Rs. 5,000, a first appeal shall lie to this Court in which not merely questions of law but also questions of fact may be investigated.

Let us now turn to the provisions of sections 211 and 212 of the Code of Civil Procedure of 1882. The first of these authorises the Court, which has seizin of a suit for recovery of possession of immoveable property, to provide in the decree for recovery of mesne profits from the institution of the suit to the delivery of possession. The second section deals with cases in which the claim is for recovery of possession and mesne profits antecedent to the suit. The Court may either determine the amount of the decree itself or direct an enquiry and dispose of the matter on further orders. Section 244 then provides that an enquiry into the amount of mesne profits in either of these contingencies must be made by the Court executing the decree. Clause (*a*) deals with mesne profits antecedent to the institution of the suit, that is, refers to cases covered by section 212. Clause (*b*) refers to mesne profits *pendente lite* and covers cases mentioned in section 211. Now, in so far as mesne profits antecedent to the decree are concerned, the plaintiff is required under section 50 of the Civil

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Procedure Code to name the amount claimed only approximately, and the court-fees have to be paid under section 7, clause (*1*) of the Court Fees Act, according to the amount claimed. Section 11 of the Court Fees Act then provides that if the amount decreed ultimately exceeds the amount claimed, the decree is not to be executed till the deficit court-fees have been paid. This applies whether the mesne profits are awarded by the decree itself or are left to be ascertained in the course of the execution of the decree. In so far as mesne profits between the institution of the suit and the dilivery of possession under the decree to be made are concerned, it does not appear that the plaintiff is required to state the amount even approximately. In fact, even an approximate statement is impossible, as the amount must vary with the length of the period during which the litigation continues. On this principle, it has been ruled by the Bombay High Court in *Ram Krishna* v. *Bhimabai* (1), by the Madras High Court in *Maiden* v. *Janakiramayya* (2), and by this Court in *Bunwari Lal* v. *Daya Sunker* (3), that no court-fees are required to be paid, either in the original or in the Court of Appeal, in respect of the possible value of mesne profits *pendente lite*. It is manifest, therefore, that mesne profits antecedent to the suit and mesne profits *pendente lite* stand on very different grounds. In fact, as regards the latter, there is no cause of action at the time of the commencement of the suit, and it is only by means of statutory provisions framed with the obvious purpose of shortening litigation, that they can be awarded in the suit even though they accrued subsequent to the institution of the suit. The mesne profits antecedent to the suit have, on the other hand, accrued before the

(1) (1890) I. L. R. 15 Bom. 416. (2) (1893) I. L. R. 21 Mad. 271.
(3) (1909) 13 C. W. N., 815.

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commencement of the suit and although, therefore, the amount may not be stated with absolute certainty, the amount can be mentioned with some approach to approximation. When, therefore, a plaintiff institutes his suit for possession and mesne profits antecedent to the suit in a Court of limited pecuniary jurisdiction, he may, on the principle explained in *Golap Singh* v. *Indra Kumar Hazra* (1), to which we adhere in spite of the decision in *Sudarshan Dass* v. *Rampershad*(2), be rightly deemed to have limited his claim to the maximum amount for which that Court can entertain a suit. In fact, in such a case, if the plaintiff subsequently puts forward a claim in excess of the jurisdiction of the Court, he may justly be required to remit the excess, because he has with his eyes open brought his suit deliberately in a Court of limited pecuniary jurisdiction. In the case before us, therefore, the plaintiff cannot rightly claim more than Rs. 313-8 on account of mesne profits antecedent to the suit. Indeed, the decree-holder has through his learned vakil offered to abandon the claim in respect of mesne profits antecedent to the suit. Consequently, no assessment need be made on account of these mesne profits.

The question next arises as to mesne profits *pendente lite*. It has been suggested that the learned Munsif should be deemed to have jurisdiction to assess these profits and to make a decree for any amount he may determine, however much such amount may exceed the limit of the pecuniary jurisdiction of the Court. In support of this proposition, reliance has been placed upon the case of *Rameswar* v. *Dilu* (3). In our opinion, that case is clearly distinguishable. There a suit was brought to recover land valued at

(1) (1909) 13 C. W. N. 493 ; 9 C. L. J., 367.

(2) (1910) 7 All. L. J. R. 963.

(3) (1894) I. L. R. 21 Calc. 550.

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Rs. 950. Mesne profits antecedent to the suit were not claimed, but there was a prayer for award of mesne profits *pendente lite.* When the suit was instituted, the limit of the pecuniary jurisdiction of the Munsif was Rs. 1,000. By the time the Munsif made his decree for recovery of the land and for assessment of mesne profits *pendente lite*, the pecuniary limit of his jurisdiction had been raised to Rs. 2,000. The plaintiff subsequently invited the Court to ascertain the mesne profits and estimated them at Rs. 1,595. The judgment-debtor objected that an award could be made for only Rs. 50, that is, the difference between Rs. 1,000 (the limit of the pecuniary jurisdiction of the Court at the date of the institution of the suit, and Rs. 950 the value of the land). This contention was overruled. It may be remarked that at the date of the institution of the suit, there was no cause of action for recovery of mesne profits *pendente lite.* The jurisdiction of the Munsif was extended to Rs. 2,000 before the decree for mesne profits was made. In fact, the cause of action for mesne profits accrued from day to day after the institution of the suit, and when the Court made the order for assessment, it had jurisdiction, if a suit for mesne profits had been then commenced, to make a decree for Rs. 2,000. As a matter of fact, the amount claimed was Rs. 1,595. The actual decision, therefore, in *Rameswar* v. *Dilu* (1), may possibly be defended, though there are expressions in the judgment which may be open to criticism But, as was observed by Lord Halsbury in *Quinn* v. *Leathem* (2), " every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the

(1) (1894) I. L. R. 21 Calc. 550. (2) [1901] A. C. 49', 506.

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particular facts of the case in which such expressions are to be found." It may further be observed that Courts have always been reluctant to extend the application of the case of *Rameswar* v. *Dilu* (1) to cases not precisely similar: see *Gulab Khan* v. *Abdul Wahab Khan* (2) *Ijjatulla* v. *Chandra Mohan* (3), *Golap Singh* v. *Indra Kumar* (4) and *Manna Lal* v. *Samandu* (5). We are clearly of opinion that the rule laid down in *Rameswar* v. *Dilu* (1) cannot possibly be extended to the case before us for two weighty and obvious reasons, namely, *first* that the value of the claim for the mesne profits *pendente lite* which the decree-holder now invites the Court to investigate, is much in excess of the value of a suit which a Munsif is generally competent or may specially be authorised to try; and, *secondly*, that if the Munsif investigated the claim, there would be insuperable difficulty as to the *forum* of appeal, which could not be either the Court of the District Judge, who can hear appeals only in suits of which the value does not exceed Rs. 5,000, or this Court, because the Legislature never contemplated an appeal direct from a decision of the Munsif to the High Court. We must hold, therefore, that the Munsif cannot entertain the application for investigation of mesne profits *pendente lite* as the claim is laid at over Rs. 60,000. In our opinion, the proper course to follow is to direct the return of the plaint, in so far as it embodies a prayer for assessment of mesne profits from the institution of the suit to the date of delivery of possession, for presentation to the proper Court, that is, the Court of the Subordinate Judge. In fact, the plaint may be treated as including two, if not three, distinct claims as we have already explained,

(1) (1894) I. L. R. 21 Calc. 550.
(2) (1904) I. L. R. 31 Calc. 365.
(3) (1907) I. L. R. 34 Calc. 954.
(4) (1909) 13 C. W. N. 493.
(5) (1906) P. R. 46.

and we may very well direct that the plaint, in so far as it includes a claim for mesne profits *pendente lite*, should be returned for presentation to a Court of competent pecuniary jurisdiction. The decree-holder has no objection to the adoption of this course. But the judgment-debtor urges that if the mesne profits have been now estimated by the decree-holder with any approach to accuracy, the value of the property itself must have been very much higher than Rs. 686-8, and the case should not have been tried by a Munsif. We are unable to give effect to this contention at the present stage after the suit, in so far as it is for recovery of land, has terminated and the decree of this Court has become final. It must further be remembered that the defendant did not take any exception to the value of the land and cannot now be heard to question the jurisdiction of the Court in that respect.

The result, therefore, is that this appeal is allowed and the orders of the Courts below discharged. The claim for mesne profits antecedent to the suit is dismissed as it is abandoned by the decree-holder. The plaint in so far as it embodies a claim for mesne profits from the institution of the suit on the 12th April 1902 to the delivery of possession on the 5th July 1907, will be returned to the plaintiff for presentation to the proper Court, that is, the Court of competent pecuniary jurisdiction. We do not decide whether, when the plaint is so presented, any question of limitation will arise, or if any question of limitation arises, whether section 14 of the Limitation Act will be of any assistance to the plaintiff. The appellant is entitled to his costs in the present proceedings in all the Courts.

The Rule will stand discharged.

G. S. *Appeal allowed; Rule discharged.*