

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
Mr. Justice Parker.*

AYYAVAYYAR (RESPONDENT), APPELLANT,

and

SHÁSTRAM AYYAR (PETITIONER), RESPONDENT.*

Civil Procedure Code, ss. 244, 583.

The Court has power to award to a successful appellant interest upon an amount found on appeal to have been improperly levied in execution of a decree.

IN suit 14 of 1884 the Subordinate Judge of Tinnevelly decreed, *inter alia*, that defendant No. 3 should pay half the costs of the plaintiff. The plaintiff recovered Rs. 871-11-0 in execution. On appeal the decree was reversed and defendant No. 3 levied this sum with interest from plaintiff. Upon this plaintiff applied for a refund of the amount levied as interest (Rs. 56-12-3) and the Court (K. R. Krishna Menon) ordered a refund on the ground that there was no provision in the decree to levy interest. Against this order defendant No. 3 appealed.

Bháskyam Ayyangár for appellant.

Parthasaradi Ayyangár for respondent.

The Court (Collins, C.J., and Parker, J.) delivered the following

JUDGMENT:—The question before us is whether a Court can award interest on a sum ordered to be repaid by way of restitution under a decree passed in an appeal (s. 583, Code of Civil Procedure). We are referred to the decision in *Ram Sahai v. The Bank of Bengal* (1) in support of the contention that appellant is entitled to interest on the refund claimed. The appellant's pleader argues that the case is analogous to an order for the refund of mesne profits in a similar case and refers to *Lati Kooer v. Sobadra Kooer* (2).

On the other hand, the respondent's pleader urges that *Ram Sahai v. The Bank of Bengal* is inconsistent with the Full Bench

* Appeal against Order 75 of 1886.

(1) I.L.R., 8 All., 232.

(2) I.L.R., 3 Cal., 720.

decision of the same High Court in *Ram Ghulam v. Dwarka Rai*,⁽¹⁾ in which it was held that a suit for mesne profits in such a case was not barred by s. 244, Code of Civil Procedure. That decision was followed in *Gannu Lal v. Ram Sahai*.⁽²⁾

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As regards the recovery of mesne profits under s. 583, the decisions of the Calcutta and Allahabad High Courts would appear to be conflicting. But in regard to the award of interest upon a sum of which the restitution is ordered under s. 583 of the Code of Civil Procedure, we are of opinion that the principles laid down by the Privy Council in *Rodger v. The Comptoir D'Escompte de Paris* ⁽³⁾ on appeal from the Supreme Court of Hong Kong should govern the case. In that appeal Lord Cairns, in giving the judgment of the Privy Council, pointed out that, if only the principal sum was restored to the petitioners without any interest, a very grave injury would be done. The petitioners would recover a sum taken away from them by mistake only after a considerable lapse of time, and without the ordinary fruits derived from the enjoyment of money. On the other hand, these fruits would have been enjoyed by a person who, by mistake or wrong, obtained possession of the money under a judgment, which had been reversed. Under those circumstances, the Privy Council held that a perfect judicial determination would not be arrived at unless the persons who had had their money improperly taken from them should have their money restored to them with interest for the time during which the money had been withheld.

After noticing the case of *Blake v. Mowatt*⁽⁴⁾ in the House of Lords, in which money which had been ordered to be paid under a decree was ordered by the Court below to be restored together with interest on the capital sum, their Lordships proceeded to say that they "had reason to believe that the practice of the Courts in India, when there had been a reversal of the decree in the Privy Council and money had been ordered in India to be paid back in consequence of that reversal, was to order the payment of interest." Their Lordships therefore believed, so far as any precedents existed, they were in favor of a restitution of the money with interest, and considered that the practice was in accordance with right principle and justice.

(1) I.L.R., 7 All., 170.

(2) I.L.R., 7 All., 179.

(3) L.R., 3 P.C., 465.

(4) Not reported.

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This decision was also followed by the High Court of Allaha-
 bad in *Jaswant Singh v. Dip Singh*(1) and was held not inconsistent
 with the Full Bench ruling in *Ram Ghulam v. Dwarka Rai*.(2)

We are of opinion therefore that the Court has power to
 award appellant interest upon the amount improperly levied. We
 set aside the order of the Subordinate Judge and allow appellant
 interest upon the sum levied at the rate of 6 per cent. per annum
 from the date of his payment of the sum to the Court Amin till
 the date of refund. The respondent must pay appellant's costs in
 this appeal.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and
 Mr. Justice Parker.*

VENKATARAMAN AND OTHERS (PETITIONERS AND APPELLANTS)

and

MAHALINGAYYAN (RESPONDENT)*

1886.
 July 30.
 August 4.

*Civil Procedure Code, ss. 248, 295, 622—Execution Proceedings—Rateable distribution—
 Application for further execution—Notice.*

A, and subsequently B, obtained decrees against X, in execution of which the
 same land was attached, and B obtained an order for rateable distribution. Neither
 decree was satisfied. A then applied for attachment of other property and the sale
 was fixed for 28th September. On 25th September B filed a petition for further
 attachment under ss. 250, 274, and also a petition for rateable distribution under
 s. 295 of the Code of Civil Procedure. The District Judge rejected the application
 for execution as being too late, and then the application under s. 295, because no
 application for execution was pending :

Held, on appeal, that the petition for execution was wrongly rejected, but that
 the High Court could not, under s. 622 of the Code of Civil Procedure, revise the
 order rejecting the application under s. 295 for rateable distribution.

PETITION, under s. 622 of the Code of Civil Procedure, praying
 the High Court to revise the order made by J. A. Davies, Acting
 District Judge of Tanjore, on civil miscellaneous petition No. 757,
 and Appeal against the order passed by the same Court on civil
 miscellaneous petition 758 of 1885, between the same parties.

(1) I.L.R., 7 All., 432.

(2) I.L.R., 7 All., 170.

* Appeal against Order 7 of 1886 and C.R.P. 10 of 1886.