

## APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

RAM MANICKYA DEY (DEFENDANT) v. JUGGUNNATH GOPE AND  
OTHERS (PLAINTIFFS).\*

18:  
Dec.

*Execution of Decree for Mesne Profits—Subsequent Mesne Profits.*

Where a decree is silent as to the date up to which mesne profits are to run, and merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned, for the purposes of assessment in execution, up to the date of the institution of the suit.

*Sadasiva Pillai v. Ramalinga Pillai* (1) and *Wise v. Rajendur Coomar Roy* (2) followed.

THE plaintiffs in this case instituted this suit on the 21st January 1871 for possession of a certain taluq, Malikakhakil, and for mesne profits (wasilat) from Pous 1271 to Pous 1277 (1865 to 1870), and obtained a decree on the 6th July of that year. A portion of the decree ran as follows:—"The plaintiff is to recover from the defendant costs and interest at six per cent from the date of the decree; and the plaintiff is to recover whatever, in the course of the execution, may be ascertained to be the wasilat (mesne profits) accruing on the said lands awarded in decree, with interest thereon also at the same rate and costs." The defendant, to prevent the sale of certain zemindari lands ordered by the lower Court on execution of this decree, paid into Court, on the 7th May 1878, the sum of Rs. 2,361 as representing wasilat and interest calculated from the year 1271 (1865), the date of the institution of the suit, to the end of the year 1278 (1871), the time when the defendant relinquished possession of the land, the subject of the suit. After such payment, the defendant applied for a refund of part of the money so paid, on the ground that the terms of the decree did not authorise the payment of that portion of the wasilat and interest calculated from the date of the institution of

\* Appeal from Order, No. 146 of 1879, against the order of J. C. Gaddes, Esq., Officiating Judge of Zilla Tipperah, dated the 7th April 1879, affirming the order of Baboo Ohunder Mohun Mookerjee, Officiating First Subordinate Judge of that District, dated the 6th May 1878.

(1) L. R., 2 L. A., 219.

(2) 11 W. R., 200.