

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Wallis.

GUTTA SARAMMA (FIRST DEFENDANT), APPELLANT,

v.

MAGANTI RAMINEDU AND OTHERS (PLAINTIFFS NOS. 2 TO 8), RESPONDENTS.*

1908,
April 10.
May 4.

Civil Procedure Code, Act XIV of 1882, s. 43—Suit for land, no bar to subsequent suit for mesne profits.

A suit for possession of land is no bar under section 43 of the Civil Procedure Code to a subsequent suit for mesne profits to such land accruing prior to the institution of the former suit.

Tirupati v. Narasimha, (I.L.R., 11 Mad., 210), followed.

Venkoba v. Subbanna, (I.L.R., 11 Mad., 151), not followed.

THE facts of this case are sufficiently set out in the judgment.

V. Ramesam for appellant.

Mr. T. Prakasam for fifth to seventh respondents.

R. Kuppaswami Aiyar for first to seventh respondents.

JUDGMENT.—The plaintiffs on the 4th December 1899 filed Original Suit No. 777 of 1899 to recover certain property as heir of the last owner, and on the 5th December 1899, the next day, he filed the present suit for mesne profits. The question considered by the lower Courts, and argued before us, is whether under these circumstances the suit is barred by the provisions of section 43 of the Civil Procedure Code. In *Venkoba v. Subbanna*(1), it was held that a plaintiff who had brought a suit for possession was barred under section 43, Civil Procedure Code, from bringing a fresh suit for mesne profits accruing prior to the institution of the former suit. On the other hand, it was held by the same learned Judges, in *Tirupati v. Narasimha*(2), that a suit for mesne

* Second Appeal No. 614 of 1905, presented against the decree of M.R.Ry. T. Varada Rao, Additional Subordinate Judge of Godavari at Rajahmundry, in Appeal Suit No 309 of 1902, presented against the decree of M.R.Ry. P. C Tiruvenkatachariar, District Munsif of Rajahmundry and Ellore, in Original Suit No. 766 of 1899. Ellore (Original Suit No. 452 of 1901 additional Court).

(1) I.L.R., 11 Mad., 151.

(2) I.L.R., 11 Mad., 210.

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profits in respect of lands held over by a tenant after the expiration of his lease was no bar to a subsequent suit for possession. It is not easy to see why section 43 should operate as a bar in the one case and not in the other, and we are unable to reconcile the two decisions. The later case follows *Manohur Lail v. Gouri Sankur*(1), which was not cited in *Venkoba v. Subanna*(2), and is in accordance with *Lales.or Babui v. Janki Bibi*(3), and we think the District Munsif was right in following it rather than *Venkoba v. Subanna*(1). The appeal must therefore be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Wallis.

PRAYAGA DOSS JEE VARU, MAHANT (DEFENDANT),
APPELLANT,

v.

TIRUMALA ANANDAM PILLAI, PURISA
SRIRANGACHARYULU VARU AND ANOTHER (PLAINTIFFS),
RESPONDENTS.*

Privy Council, final decree of, directing lower Court to frame rules, s. 244; Civil Procedure Code—Lower Court in framing such rules acts in execution and its order is appealable under s. 244 of the Code of Civil Procedure.

An order in Council discharged the decrees of the High Court and District Court and referred it to the latter to frame rules for carrying out a scheme of management directed by the said Order in Council:

Held, that the order in Council disposed of the case finally, and it was not intended to make a reference to the District Court under section 17 of the Privy Council Act, 3 and 4 Will, IV, Cap. 41. If such a reference was contemplated, the referee would have to report and the case would have been adjourned pending the receipts of such report. The judgment and order clearly did not contemplate such a report but disposed of the case finally.

(1) I.L.R., 9 Calc., 283.

(2) I.L.R., 11 Mad., 151.

(3) I.L.R., 19 Calc., 615.

* Civil Miscellaneous Appeal No. 259 of 1907, presented against the order of K. C. Manavedan Raja, Esq., District Judge of North Arcot, framing rules under paragraph 2 of the order of His Majesty's Privy Council, in Privy Council Appeal No. 6 of 1906 against the decree of the High Court in Appeal Suits Nos. 236 of 1901 and 38 of 1902.