

with this point, and I have also myself had at some little length to discuss it in the case of *Empress v. Ganraj* (1). Therefore the statement of Deodat should have had no weight against Mulu or Khilla.

1880

EMPRESS v.  
INDIA  
v.  
MULU.

Much as I regret to have to do so I must send this case back for further inquiry before the Sessions Judge without the assessors, such inquiry to be conducted in the presence of the three accused, who are to be afforded every opportunity for cross-examination, and the further proof is to be directed to establish the loss of the several articles and their identity by Ganga Prasad. In addition to this I desire fuller evidence of what was said by Mulu and Khilla, each individually, as to the property found in the well both before and at the time of its being found, whether both or which of them went down the well, and what the date was on which Mulu gave any intimation that he could restore some of the property. When this evidence has been taken it must be returned certified to the Court, which will then proceed to dispose of the appeal.

## APPELLATE CIVIL.

1880  
January

*Before Mr. Justice Oldfield and Mr. Justice Straight.*

BACHCHU (PLAINTIFF) v. MADAD ALI (DEFENDANT).\*

*Act X of 1877 (Civil Procedure Code), s. 210—Decree for money.*

There is nothing in s. 210 of Act X of 1877, or elsewhere in that Act, authorising a Court to direct that the amount of a decree should be paid within a fixed time from its date. *Seemle* that the provisions of s. 210 of Act X of 1877 are not applicable in a suit for the recovery of the amount of a bond-debt by the sale of the "nankar" allowance hypothecated by such bond.

The plaintiff sued to recover Rs. 177 on a bond, from the defendant, personally, and by the sale of a "nankar" allowance of Rs. 106-2-0, which was paid annually to the defendant by certain lessees of his, and which allowance the defendant had hypothecated

(1) I. L. R., 2 AL. 444.

\* Second Appeal, No. 897 of 1878, from a decree of H. A. Harrison, Esq., Judge of Mirzapur, dated the 19th May, 1879, affirming a decree of Munshi Madho Lal, Munsif of Mirzapur, dated the 18th January, 1879.

1880

BACHHU  
v.  
ADAD ALL.

in the bond as security for the payment of the amount thereof. The Court of first instance gave the plaintiff a decree for the amount claimed by him against the defendant and against "the mortgaged property," and directed that "the defendant should pay the amount of the decree within two years as stipulated by him." On appeal by the plaintiff from the decree of the Court of first instance the lower appellate Court observed: "The Court finds that though the lower Court has not stated in writing its reasons for ordering payment by instalments, yet there are good and sufficient reasons for the order: the value of the property sought to be brought to sale is out of all proportion to the sum decreed: secondly, it appears that the defendant is willing and has endeavoured to meet his engagements." The plaintiff appealed to the High Court.

Munshi *Hanuman Prasad*, for the appellant.

The respondent did not appear.

The judgment of the Court (OLDFIELD, J. and STRAIGHT, J.) was delivered by

OLDFIELD, J. — The defendant borrowed from the plaintiff the sum of Rs. 125 at one per cent. interest per mensem, pledging as security an annuity of Rs 106-2-0, called "*nankar*" allowance, which the defendant received from the firm of Sadaranji and Jai-ramji, and the plaintiff has brought this suit to recover the money lent with interest, by enforcement of the lien on the annuity pledged in the bond and against the defendant personally. The Court of first instance decreed the claim, with costs and interest at eight annas per cent. per mensem, but in the decree allowed the defendant a period of two years for payment of the amount decreed. The lower appellate Court affirmed the decree. The plaintiff in second appeal has objected to that part of the decree allowing the defendant the option to pay within two years, and there is no doubt the objection is valid.

The effect of the order of the Court is that the decree-holder is debarred from taking out execution of his decree or having it satisfied till the expiry of two years from date of the decree, and there is

no authority in the Civil Procedure Code for a Court to make such an order. Under s. 210 in all decrees for the payment of money the Court may for sufficient reason order that the amount shall be paid by instalments, but this section is inapplicable, for the decretal order is not for payment by instalments, and it is doubtful whether the section will apply to a decree of the nature of the decree made in this suit, which is for something more than the payment of money. Moreover, it cannot be held that any sufficient reason is shown in this case for allowing defendant time for payment. We decree the appeal with costs, and modify the decrees of the lower Courts, by cancelling that portion which allows two years within which the amount decreed is to be satisfied.

*Appeal allowed.*

*Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Spankie.*

GANGA PRASAD (PLAINTIFF) v. GAJADHAR PRASAD AND OTHERS  
(DEFENDANTS).\*

1880  
January

*Mesne profits—Procedure on the hearing of appeal—Objection—Act X of 1877  
(Civil Procedure Code), ss. 211, 561.*

Where the parties to a suit for certain land and for the payment of mesne profits in respect of the same were co-sharers in the estate comprising such land, and the defendants had themselves occupied and cultivated such land, held that the most reasonable and fitting mode of assessing such mesne profits was to ascertain what would be a fair rent for such land if it had been let to an ordinary tenant and had not been cultivated by the defendants.

Both parties appealed from the decree of the Court of first instance, and both the appeals were dismissed by the lower appellate Court. The plaintiff appealed to the High Court from the decree of the lower appellate Court dismissing his appeal, whereupon the defendant took objections to the decree of the lower appellate Court dismissing his appeal. Held that such objections could not be entertained.

THIS was a suit in which the plaintiff claimed the possession of 37 bighas 5 biswas of land and Rs. 883-13-0 the mesne profits of the land for 1283 and 1284 fasli. The plaintiff claimed under an agreement for the partition of his share and that of the defendants in a certain mahal, under which partition the land in suit had fallen to the share of the plaintiff. The plaintiff estimated

\* Second Appeal, No. 1151 of 1878, from a decree of H. A. Harrison, Esq., Judge of Mirzapur, dated the 18th June, 1873, affirming a decree of Maulvi Muhammad Wajeh-ulla Khan, Subordinate Judge of Mirzapur, dated the 23rd April, 1873.