

received Rs. 3,126. The defendants cannot claim, being tortfeasors, to deduct the costs of the collection of money they have wrongfully collected. I am of opinion that the plaintiffs-appellants are entitled to a decree for Rs. 1,978-2-2 *plus* interest thereon at the rate of 12 per cent. per annum from the 17th February, 1883, to the date of this decree, and with costs here and below, and 6 per cent. on the amount of this decree and costs until realization.

TYRRELL, J.—I entirely concur.

*Appeal allowed.*

*Before Mr. Justice Mahmood.*

MATUK DHARI SINGH (JUDGMENT-DEBTOR) v. ALI NAQI AND OTHERS  
(DECREE-HOLDERS).\*

*Occupancy tenancy—Sale by occupancy-tenant—Decree in favour of zamindar against purchaser for mesne profits—Mesne profits how to be assessed.*

Where in a suit against an occupancy tenant and his vendee, the zamindar obtained a decree for cancellation of the deed of sale, for possession of the land by ejectment, and for mesne profits from the date of suit to the date of recovery of possession,—*held* that the mesne profits awarded must be assessed as damages against the vendee as a trespasser; and that the proper measure of such damages was not the rent which was payable by the vendor, but the actual market-value of the land for the purposes of letting.

The facts of this case are sufficiently stated in the judgment of the Court.

Kunwar *Shivanath Sinha* and Munshi *Kashi Prasad*, for the appellant.

Mr. *Niblett* for the respondents.

MAHMOOD, J.—In arguing this appeal, Mr. *Kashi Prasad*, who has appeared on behalf of Mr. *Shivanath Sinha*, has not pressed the second, third, and the fourth grounds of appeal, and has confined his argument to the first and the fifth grounds of appeal. I need not therefore deal with the case beyond the scope of these grounds in the memorandum of appeal.

The facts necessary to elucidate the questions raised are that one *Jageshar* and *Musammat Abhlokhi* were occupancy-tenants of the land to which this suit relates, and on the 20th February, 1882,

\* Second Appeal, No. 143 of 1887, from a decree of W. J. Martin, Esq., District Judge of Mirzapur, dated the 10th January, 1887; modifying a decree of Munshi Shankar Lal, Munsif of Mirzapur, dated the 24th September, 1886.

1887

SHIVAD DEB  
v.  
AJUDHIA  
PRASAD.

1887  
July 5.

1887

MATUK  
 DHARI  
 SINGH  
 v.  
 ALI NAQI.

they executed a sale-deed whereby they conveyed their occupancy tenure to Matuk Dhari Singh, the present appellant before me. Thereupon the present respondents, who are zamindárs of the village, sued the vendors and the vendee for the cancellation of the deed of sale, and also for possession of the land, but the prayer for ousting was limited to the ejection of the vendee on the ground that the sale-deed under which he had purchased the tenure was illegal, by reason of the prohibition contained in s. 9 of the Rent Act. The suit was instituted on the 26th May, 1883, and the plaint included a prayer that the future mesne profits might be awarded as against the defendant-vendee, who was, according to the contention in the plaint, a trespasser upon the land by reason of the invalidity of the sale-deed under which he had entered into possession. The suit was decreed on the 17th January, 1884, but the decree by some oversight did not contain any award as to the future mesne profits claimed in the suit. This circumstance led to an application for amendment of the decree, and the application was granted on the 15th January, 1886, whereby, in awarding the remedy, the decree specified that the plaintiffs who had succeeded were also to realize future mesne profits in respect of the land to which the suit related.

The decree having been so amended, the plaintiffs, decree-holders-respondents before me, obtained possession of the land, and on the 28th May, 1883, they presented the present application for execution of their decree for the purpose of realizing future mesne profits as the amended decree awarded.

The application was resisted upon the grounds, *inter alia*, that the future mesne profits to which the decree related referred only to a period subsequent to the date of the decree, and not to the period intervening between the institution of the suit and the passing of the decree; and, in the next place, that the amount of mesne profits claimed by the decree-holder was excessive.

The decree-holders had claimed in their application for execution Rs. 369-6 as mesne profits for the year 1291 fasli; but the lower appellate Court has found that the sum was extravagant, and that the real letting market value of the land would be Rs. 148-8, and this sum that Court has allowed as the proper amount

of mesne profits to which the respondents-decree-holders were entitled under the decree. The lower appellate Court has also held that the period to which such mesne profits related was the period from the date of the institution of the original suit up to the date when the decree-holders obtained possession of the land under the decree. The order of the lower appellate Court gives effect to these views, and it is from that order that this second appeal has been preferred to this Court.

The contention of the parties before me raises two questions for determination :—

1. Whether the future mesne profits awarded by the decree of the 17th January, 1884, as amended on the 15th January, 1886, are to be calculated for the period between the date of the suit up to the actual possession, or is limited to the interval between the passing of that decree and the date of possession of the decree-holders under that decree.

2. Whether in the assessment of mesne profits as damages for the purposes of ss. 211 and 212 of the Code, the mesne profits to be awarded are to be represented by such rents as the occupancy tenants, Jagesbar and Musammat Abhlakhi, paid to the zamíndárs, decree-holders, before the sale-deed of the 20th February, 1882, or by the actual market value of the land for the purposes of letting.

Upon the first point, having considered the matter, I am of opinion that the future mesne profits, which the decree awarded, relate to the whole period intervening between the date of the suit and the date of possession. This view is the same as that taken by the learned Judge of the lower appellate Court. But upon this point it is ingeniously argued by Mr. *Kashi Prasad* on behalf of the appellant, that the application of the 28th May, 1886, which prayed for execution of the decree and mesne profits claimed, contained the Hindustani words "*zar kharcha wa wasilat mabad digri*," that is to say, the costs and mesne profits subsequent to the passing of the decree of the 17th January, 1884. The original application, which is now before me, contains some words of amendment which seem to have been hurriedly made by the decree-holders' pleader, and which may possibly bear the interpre-

1887

---

 MATUR  
 DHARI  
 SINGH  
 v.  
 ALI NAQT.

1887

MATUK  
DHARI  
SINGH  
v.  
ALI NAQR.

tation upon which Mr. *Kashi Prasad* insists. But having considered the matter, I think that the Hindustani words may be so read as to render the expression applicable to future mesne profits, calculated, not from the date of the decree, but from the date of the institution of the suit, namely, 26th May, 1883.

As to the second point, I confess I have had some difficulty in deciding the question because of a *dictum* in an unreported case decided by a Division Bench of this Court. But that case is not on all fours with the present, and I do not think it precludes me from expressing my own views as to the matter of the assessment of mesne profits. What is contended is, that according to law in a case of this kind the measure of damages when claimed as mesne profits is the rent which the zamindar could have realized from the occupancy tenants who have, by reason of an illegal sale, placed the vendee in possession, and that the amount of such damages should not be assessed upon any other principle. It is perfectly true that if the vendors of the deed of the 20th February, 1882 had never executed that deed, and had continued in possession of their occupancy holding, the plaintiffs-zamindars could not realize more than the rent due by those occupancy-tenants; but it does not follow therefrom that such rent is the measure of damages. When such damages are claimed against a person who, by taking an illegal sale from such occupancy-tenants, acquires possession of the land, and, as such, holds possession, his position is no better than that of a trespasser. In this case the question has been pressed, because, whilst the decree-holders claimed no less than Rs. 369-6 as the amount of mesne profits, the learned Judge of the lower appellate Court has fixed such mesne profits to amount only to Rs. 148-8, and the rent payable by the occupancy-tenants-vendors is only Rs. 37-3.

It has been ruled by me in the case of *Dobi Prasad v. Har Dyal* (1) that the act of an occupancy-tenant in making a transfer which would be void under the law as contained in s. 9 of the Rent Act, is not such an act as would involve forfeiture of the tenure and ejection of the occupancy-tenant under cl. (b) of s. 93 of the Rent Act. The view there expressed has been approved by the present learned Chief Justice of this Court in the case of *Fatima*

(1) I. L. R., 7 All. 691.

*Bejam v. Hamsi* (1), and has since been adhered to by me in the more recent case of *Mul Chand v. Pitam* (2); but those views relate more to a case in which the zamindar, in consequence of an invalid transfer made by an occupancy-tenant, seeks to oust such tenant by process of the Rent Court, than to a case of this kind, where a decree has already been made, rightly or wrongly, in a regular suit awarding possession to the zamindars of the holding of an occupancy-tenant, which holding such tenant had invalidly sold. As a Court executing the decree cannot go behind the decree itself, I must take it that the decree now sought to be executed was a decree properly passed, though I am not prepared to express any opinion as to whether the effect of that decree is to terminate the occupancy tenure of Jageshar and Musammatt Abhlakhi. So far as the immediate question now under consideration is concerned, it seems to me that the mesne profits awarded must be assessed as damages against the present appellant with reference to his character of having been in possession under an invalid sale-deed, and thus a trespasser upon the land. It seems to me that the proper measure of damages is not the rent which was payable by the occupancy-tenant to the zamindar, a rent subject to its own peculiar statutory limitations, but the proper market value of the land for the purposes of leasing. That value has been found to be Rs. 148-8 per annum; and this sum, therefore, represents the loss occasioned by the wrongful act of the present appellant in getting into possession of the land under an invalid sale-deed from the occupancy-tenants.

For these reasons, agreeing with the conclusions at which the learned Judge of the lower appellate Court has arrived, I dismiss this appeal with costs.

*Appeal dismissed.*

(1) I. L. R., 9 All. 244.

(2) S. A. No. 1151 of 1886, decided on the 28th June, 1887.

1887  
MADUK  
PURBI  
SINGH  
v.  
ALI NAQI.