

Before Mr. Justice Mahmood and Mr. Justice Duthoit.

GANNU LAL (JUDGMENT-DEBTOR) v. RAM SAHAI (DECREE-HOLDER).*

1884
December 4.

Decree for possession of immoveable property—Execution of decree—Reversal of decree on appeal—Mesne profits—Civil Procedure Code, ss. 244, 583.

G obtained a decree against R for possession of a house, and in execution thereof obtained possession. On appeal, the decree was set aside by the High Court, whose decree did not direct that the appellant should be restored to possession and was silent as to mesne profits.

Held that with reference to s. 583 of the Civil Procedure Code, R was entitled to recover possession of the property in execution of the High Court's decree, but that, with reference to the decision of the Full Bench of the Court in *Ram Ghulam v. Dwarka Rai* (1), he could not, in execution of that decree, recover mesne profits.

ON the 10th September, 1880, Gannu Lal, the appellant in this case, sued Ram Sahai, the respondent, for possession of a house, and on the 23rd September, 1880, obtained a decree for possession of the same. This decree was affirmed on appeal, on the 24th December, 1880. On appeal from the appellate decree the High Court, on the 19th November, 1881, set aside both decrees and dismissed the suit. In the meantime, on the 13th April, 1881, Gannu Lal had obtained possession of the property, by execution of decree. Ram Sahai subsequently sued Gannu Lal for possession of the property and for mesne profits. He obtained a decree in this suit on the 26th July, 1883. This decree was set aside by the appellate Court, which directed him to proceed by way of execution of the High Court's decree. Ram Sahai accordingly made the application out of which this appeal arose. He applied in execution of the High Court's decree to recover possession of the property and mesne profits for the period he was out of possession. It was contended for Gannu Lal that, as the High Court's decree did not mention mesne profits, they could not be allowed, and further that that decree merely reversed the orders giving Gannu Lal possession, and did not give Ram Sahai possession, and the latter was only entitled to recover his costs under that decree and no more. Both the lower Courts disallowed this contention, and granted Ram Sahai's application both in respect

* Second Appeal No. 56 of 1884, from an order of W. Young, Esq., District Judge of Allahabad, dated the 21st March, 1884, affirming an order of Pandit Indar Narain, Munsif of Allahabad, dated the 22nd December, 1883.

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of delivery of possession and mesne profits. The lower appellate Court, after observing that, if the Courts executing the decree had the right to allow mesne profits, the amount allowed by the Court of first instance was not excessive, continued as follows :—

“Such right, I think, it does possess, for under cl. (c), s. 244, Act XIV of 1882, very general power is given to do what is requisite to give full effect to the decree. Now, I take it that the meaning of the High Court’s decree, dated 19th November, 1881, was this, viz., that Ram Sahai, not Gannu Lal, was to be deemed the rightful proprietor of the house, and that Gannu Lal’s possession was to be reversed, and I take it further that the scope of this decree must be taken as applying from the beginning of the litigation on these facts between the parties; and as the High Court expressly reversed the orders of the two lower Courts, it must be taken to have reversed the consequent steps taken *pendente lite* by Gannu Lal to put into execution the orders of the said two lower Courts: that is, it must be taken to reverse the orders by which, on the 13th April, 1881, Gannu Lal had got possession of the house, and consequently it follows that from such date mesne profits are due to Ram Sahai (High Court appellant). And for similar reasons, I also hold that the lower Court’s order putting Ram Sahai in possession of the house is right, and is a proper interpretation of the duty of the execution-department in execution of the High Court’s order, dated 19th November, 1881.”

On second appeal it was contended for Gannu Lal, appellant, that Ram Sahai was not entitled either to possession or mesne profits under the High Court’s decree, that decree not awarding possession, but merely dismissing Gannu Lal’s suit, and further being silent as to mesne profits.

Babu *Ram Das Chakarbat*i and Munshi *Sukh Ram*, for the appellant.

Babu *Sital Prasad*, for the respondent.

The Court (MAHMOOD and DUTHOIT, JJ.) delivered the following judgment :—

MAHMOOD, J.—It is admitted that the decree of 23rd September, 1880, in execution of which the appellant obtained possession of the property, made no provision as to mesne profits, and that

he realized none in execution of that decree. The decree was finally reversed by this Court on the 19th November, 1881, and in executing that decree the lower Courts have restored the respondent to possession and also allowed him mesne profits.

So far as the question of possession is concerned, the order of the lower Courts was right with reference to s. 583 of the Civil Procedure Code. But the question of recovery of mesne profits is governed by the recent Full Bench ruling in *Ram Ghulam v. Dwarka Rai* (1), and we therefore partially decree the appeal and set aside the order of the lower Courts so far as it awards mesne profits to the respondent. Under these circumstances we make no order as to costs.

Appeal allowed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice
Brodhurst.

1884
December 5.

SHAH MUHAMMAD AND OTHERS (DEFENDANTS) v KASHI DAS (PLAINTIFF).*

Declaratory decree—Abstract right—Cause of action—Costs.

A Hindu brought a suit in which he alleged that the Hindu community had acquired by long established custom an exclusive right to use for religious purposes a Ghat situate on the river Ganges, but that the Muhammadans were in the habit of interfering with the exercise of such right by bathing at the Ghat. He prayed for a declaration of the right, and for a perpetual injunction to be issued to the Muhammadans generally forbidding them to resort to the Ghat. No act of trespass was charged against any of the defendants. The defence was that the Muhammadans were entitled to use the place, and that their use of it did not cause any inconvenience to the plaintiff.

Held that the suit was not maintainable, since the Court had no power to pass a decree against persons who had never interfered with the property in dispute, or to issue an injunction against the whole Muhammadan world; but that, inasmuch as the defendants had fought the case all along as if the suit were maintainable, and upon a false issue, both sides must pay their own costs.

THE plaint in this case stated that for many years there had existed in mohalla Mughalpura, in the city of Gházipur, a “ghát” on the river Ganges, known as the Pushto Ghat; that close to the ghát there was a “sangat” (place of worship) for holy men; that the Pushto Ghát and the “sangat” had been constructed by Hindus

* Second Appeal No. 1125 of 1883, from a decree of J. W. Power, Esq., District Judge of Gházipur, dated the 12th April, 1883, modifying a decree of Babu Nilmadhab Roy, Munsif of Gházipur, dated the 22nd December, 1882.

(1) *Ante*, p. 170.