

APPELLATE CIVIL.

1897
February 11.

*Before Mr. Justice Knox and Mr. Justice Burkitt.**

BIJAI BAHADUR SINGH (DECREE-HOLDER) v. BHUP INDAR BAHADUR SINGH (JUDGMENT-DEBTOR).

Civil Procedure Code, s. 211—Execution of decree—Mesne profits—Interpretation of decree awarding “future mesne profits.”

A decree for possession of immovable property was passed by the District Judge of Mirzapur on the 12th of November, 1887, in favour of a plaintiff declaring that “the plaintiff is also entitled to mesne profits.” That decree was affirmed by an order of Her Majesty in Council dated the 11th of May, 1895, without variation in respect of the order as to mesne profits. Possession of the immovable property to which the decree related was obtained by the decree-holder on the 30th of November 1895.

Held that the decree of Privy Council was to be construed as a decree awarding mesne profits up to the date when possession was obtained and from the date of the institution of the suit. *Fakharuddin Mahomed Ahsan v. Official Trustees of Bengal* (1) and *Puran Chand v. Roy Radha Kishen* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Mr. B. E. O’Conor, Paudit *Sundar Lal* and Pandit *Madan Mohan Malaviya*, for the appellant.

Messrs. C. Dillon and E. A. Howard, for the respondent.

KNOX and BURKITT, JJ.—In this case the appellant decree-holder obtained by order of Her Majesty in Council a decree for possession of certain immovable property, possession of which he has obtained.

The order of Her Majesty in Council reversed a decree of this Court and affirmed a decree, dated November 12th, 1887, of the District Judge of Mirzapur. That decree, with respect to mesne profits, was in these words:—“The plaintiff is also entitled to future mesne profits.” So, whatever be the meaning of those words, they were wholly affirmed by the order of Her Majesty in Council,

* First Appeal No. 268 of 1896 from an order of L. H. Turner, Esq., District Judge of Mirzapur, dated the 22nd July 1896.

(1) L. R., 8 I. A., 197.

(2) I. L. R., 19 Calc., 132.

which, referring to the decree of the District Judge, contains these words:—"That the same be and is hereby affirmed."

On proceedings taken under section 610 of the Code of Civil Procedure the District Judge, referring to sections 244 and 211 of the Code of Civil Procedure, has held that the decree-holder is entitled under the decree of Her Majesty in Council to recover mesne profits for a period of three years only from the date of the decree of the District Judge, *i.e.* from the 12th of November, 1887. He holds that "the power of the Court giving the decree was limited by that section (211); it could not give mesne profits for a longer period, and the vague terms actually used in the decree—"that the plaintiff is also entitled to future mesne profits"—cannot give the decree further effect than is allowed by law under that section." But the learned Judge failed to explain why he assumed the date of the decree from which the three years were to be counted to be November 12th, 1887, the date of the decree of the Court of first instance, and not May 11th, 1895, which is the date of the order of Her Majesty in Council. We may add here that it was admitted, and very properly admitted, and indeed it could not be denied, that the only operative decree, and the only decree which could be executed in this matter, was Her Majesty's order of May 11th, 1895.

The decree-holder appeals from the order of the Court below restricting the mesne profits recoverable by him to a period of three years. His contention is that under the order of May 11th, 1895, he is entitled to recover mesne profits from the date of the institution of the suit up to the date of the order in Council, and thenceforward, future mesne profits either up to the date when he was put in possession in execution of that order, or until the expiration of three years from the date of that order, whichever event may first occur. Admittedly he obtained possession on November 30th, 1895, and he therefore asks for mesne profits up to that date.

For the respondent it is contended that there is no decree for mesne profits capable of execution. His learned counsel urged that the decree is defective in that it was not drawn up in

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accordance with section 211 of the Code of Civil Procedure, as it does not prescribe the period for which mesne profits are recoverable. He drew our attention to the law (section 196 of Act No. VIII of 1859,) as it stood before the present Civil Procedure Code was passed, and argued that, though a decree for mesne profits unlimited as to period was allowable under the former law, a decree under the present Code for mesne profits is bad and inoperative if it does not specify the period for which the mesne profits are to be recovered.

For the appellant we were referred to the case of *Fakharuddin Mahomed Ahsan v. Official Trustee of Bengal* (1) in which their Lordships, approving of two cases in 12 Weekly Reporter and 22 Weekly Reporter, held that the proper interpretation to be put on a decree which gave "possession with *wasilat*" was that it was a decree for *wasilat* (mesne profits) up to the time when possession was delivered. The words used by the District Judge in his decree, which has been adopted by their Lordships of the Privy Council, in the present case are similar in effect to those in the case from 8 Indian Appeals cited above. In accordance with the decision in that case we hold that the proper interpretation to put on the decree for mesne profits, which we are now considering, is that it is a decree for mesne profits up to date of possession. It was contended that the case just cited was inapplicable, as it was founded on and interpreted a section of the repealed Code of Civil Procedure. In that contention we cannot concur. Section 211 practically reproduces section 196 of Act No. VIII of 1859, in empowering a Court to subjoin a decree for future mesne profits to a decree for possession of immovable property. The only difference is that under the former Code the decree for mesne profits might have been for an unlimited term, while under section 211 of the present Code two alternative limits are fixed for the period during which mesne profits can be given. The interpretation we have adopted is precisely similar to the interpretation put by the High Court of Calcutta on an order passed under sections 211 and 212 of the

(1) L. R., 8 I. A., 197.

present Code, an order in which no period was prescribed for which mesne profits were to be payable. See *Paran Chand v. Roy Radha Kishen* (2).

For the above reasons we hold that we have before us an operative decree for mesne profits.

Further, the learned counsel for the respondents contended that, if there were in this case an operative decree for mesne profits, the Court below was right in not awarding such profits for more than three years from the date of the decree of the Court of first instance, his reason being, as we understood him, that a regular suit could not have been maintained for more than has been given here.

In our opinion the decision of the Court below is wrong. This appeal has been throughout argued on both sides on the assumption that the case was governed by section 211 of the Civil Procedure Code. That being so, and it being admitted that the decree to be enforced here is the order in Council of May, 1895, we have to apply section 211 to the dates and circumstances of this case interpreting the decree in the manner we have indicated above.

Accordingly we find that the appellant is entitled to recover mesne profits from September 23rd, 1886, the date on which the suit was instituted, up to May 11th, 1895, the date of the order in Council, and thereafter from May 11th, 1895, up to the 30th of November, 1895, the date on which the appellant obtained possession in execution of the order in Council.

We accordingly allow this appeal. We set aside the District Judge's finding on the second issue framed by him and his formal order dated August 3rd, 1896, and we return the record to him with instructions to proceed to determine the amount of mesne profits recoverable by appellant in accordance with our decision. The costs of this appeal will be borne by the respondent.

Appeal decreed.

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