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judgment-debtor was not a question relating to the execution of the decree. The judgment in that case must be considered with reference to the facts which the Court had to deal with. We have a number of authorities of later date in which it was held that a question of the nature of that which arises in this case is one relating to the execution, discharge or satisfaction of a decree, although it arises after a sale has taken place under the decree; in other words, section 244 applies as well to a dispute arising between the parties after the decree has been executed, as it does to a dispute arising between them previous to execution. We need only refer to *Imdad Ali* v. *Jagan Lal* (1), and *Dhan Kuar* v. *Mahtab Singh* (2). The principle of the Full Bench ruling in *Partab Singh* v. *Beni Ram* (3), is also applicable. The mere fact that no execution case was pending before the Court below at the time when the appellant filed his application on the 27th of August, 1900, would not render section 244 inapplicable. The result is that we allow this appeal, set aside the order of the Court below, and remand the case to that Court under section 562 of the Code of Civil Procedure, for disposal on the merits. The appellant will have his costs of this appeal. Other costs will follow the result.

*Appeal decreed and cause remanded.*

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*February* 18.

*Before Mr. Justice Knox and Mr. Justice Blair.*

IQBAL HUSEN AND OTHERS (DEFENDANTS) *v.* NAND KISHORE AND OTHERS (PLAINTIFFS).*

*Evidence—Possession—Presumption—Evidence of possession of certain specific property treated as evidence of possession as regards an appendage to such property, though no definite acts of possession were proved as regards the appendage—Limitation.*

Where, on the right to the produce of certain trees being called in question, it was found that the plaintiffs had not for twelve years previous to the filing of the suit done any specific acts indicating directly their possession of the trees, but that the trees nevertheless grew out of a wall which surrounded a garden in possession of the plaintiffs, it was *held* that the possession of the garden imported possession of the garden wall and of the trees springing out

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*Appeal No. 32 of 1901 under section 10 of the Letters Patent.

(1) (1895) I. L. R., 17 All., 78. (2) (1899) I. L. R., 22 All., 79.
(3) (1878) I. L. R., 2 All., 61.

of the wall, and the suit was not barred by limitation. *Rajkumar Roy* v. *Gobind Chunder Roy* (1), *Asghar Reza* v. *Mehdi Hossein* (2), and *Mohima Chunder Mozoomdar* v. *Mohesh Chander Neoghi* (3) referred to.

THE plaintiffs in this case were the purchasers of a certain garden on the south side of which was a wall, upon which some *pipal* trees grew. The defendants were purchasers of a market which adjoined the plaintiffs' garden to the south. The plaintiffs, alleging that the defendants or their servants had interfered with their possession by picking lac off the pipal trees which grew out of the wall, sued for a declaration that the defendants had no right to the wall or the trees, and for an injunction to restrain them from interfering therewith.

Both the Court of first instance (Munsif of Farrukhabad) and the lower appellate Court (Subordinate Judge of Farrukhabad) found that the wall in question belonged to the plaintiffs' garden and not to the defendants' market, and that the defendants had not been in proprietary possession of the wall and the trees for such a period as to confer on them a right to the said wall and trees by prescription. Both Courts accordingly decreed the plaintiffs' claim.

The defendants appealed to the High Court, and contended that the lower appellate Court had failed to find whether the plaintiffs were in possession within twelve years preceding the date of the suit, and that its finding upon the question of the burden of proof was erroneous. Upon this an issue was remitted by the High Court as to whether or not the plaintiffs had proved their possession within twelve years anterior to the date of the suit. The lower appellate Court found that the plaintiffs had not proved by evidence that they had done any act of possession within twelve years, and hence came to the conclusion that the plaintiffs' possession within twelve years had not been proved. It was, however, contended on behalf of the plaintiffs-respondents that having regard to the natur of the plaintiffs' possession and to the fact that the plaintiffs' title to the property had been found, the mere fact of the absence of proof of any specific act of possession could not in law lead to the conclusion that the plaintiffs were out of possession, but that possession being presumed to be with

(1) (1891-92) I. L. R., 19 Calc., 660. (2) (1892-93) I. L. R., 20 Calc., 560.
(3) (1888) I. L. R., 16 Calc., 473.

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the person having the title, the Court should have held the plaintiffs to be in possession. The view thus presented was accepted by the Judge who heard the appeal, who accordingly dismissed it.

From this judgment dismissing the appeal the defendants-respondents preferred an appeal under section 10 of the Letters Patent.

Mr. *Amir-ud-din*, for the appellants.

Mr. *C. Dillon*, Babu *Jogindro Nath Chaudhri*, Pandit *Sundar Lal* (for whom Babu *Lalit Mohan Banerji*), Munshi *Gulzari Lal* and Munshi *Gokul Prasad*, for the respondents.

KNOX and BLAIR, JJ.—The quarrel out of which the suit is said to have arisen, which led up to the present appeal, is thus stated in the pleadings. The plaintiffs, who are here respondents, say that the defendants began to pick lac off certain *pipal* trees. Upon the plaintiffs' servants interfering, the defendants, here appellants, maintained that the trees belonged to them, and the plaintiffs had no right, title or claim whatsoever in the wall and the trees. The Subordinate Judge went into the whole matter in a very lengthy judgment. Part of the obscurity of the case is perhaps due to the very length of the judgment. His findings, however (he was the Court of first appeal), were to the effect that the wall belonged to the garden, which was admittedly the plaintiffs' property, that the trees were in the garden wall, and that the defendants had not proved any act of adverse possession of any kind. It was unfortunate that the learned Subordinate Judge had not apparently the courage to take the further step and state boldly that upon his finding the wall belonged to the garden and the trees were in the garden wall. The plaintiffs' evidence which had established these facts covered and applied to the whole of the matter now in dispute. He obviously intended this when he went on to consider the question of adverse possession on the part of the defendants.

In second appeal after a remand a finding was undoubtedly put upon the record that the plaintiffs had not proved that they had done any act of specific possession within the twelve years next preceding the suit, and ground was at once opened for the present appeal. The learned counsel who appeared for the appellants

had every right to insist that upon this finding the plaintiffs' suit must be held to have failed altogether. With considerable energy he pushed forward this finding, and supported it by reference to the ruling of their Lordships of the Privy Council in *Asghar Reza* v. *Mahdi Hossein* (1) and *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi* (2). The learned Judge of this Court from whose judgment this appeal has been filed took, however, the broader and what we consider proper view of the whole case. He did not content himself by a bare adherence to this finding; but looking at the whole case found it to be one in which, while it might be that specific acts of possession on the part of the plaintiffs could not be directly proved upon a particular portion or appendage of property, still the evidence which applied to the property in the whole of which the part in dispute was merely an appendage, must be held to govern the appendage also. He applied to the case the principle laid down by their Lordships of the Privy Council in *Rajkumar Roy* v. *Gobind Chunder Roy* (3). The property in dispute in that case was a portion of the whole and a portion covered with water. Their Lordships held that "as the plaintiff's evidence is in accordance with, and is aided by, his title and previous possession, which is now made clear, and is not countervailed by anything of the slightest weight on the defendant's part" they were prepared to hold that the evidence, which clearly applied to the whole of the property, must be taken to apply to the land in dispute. So here title and possession of the garden has been clearly found to be with the plaintiffs. It is not countervailed by any act of possession on the defendants' part over the wall and the trees in dispute. We hold that the evidence which applies to the garden must be taken to apply to the walls and the trees in dispute, which we consider to be merely appendages to and part of the garden. The result is that this appeal is dismissed with costs.

*Appeal dismissed.*

(1) (1892-93) I. L. R., 20 Calc., 560. (2) (1888) I. L. R., 16 Calc., 473.
(3) (1891-92) I. L. R., 19 Calc., 660 at p. 677.