

*Before Mr. Justice Knox and Mr. Justice Aikman.*  
 WALIYA BIBI AND ANOTHER (DECREE-HOLDERS) v. NAZAR HASAN  
 (JUDGMENT-DEBTOR).\*

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 May 13.

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*Act No. XV of 1877 (Indian Limitation Act), schedule II, articles 178 and 179—Civil Procedure Code, sections 211 and 212—Mesne profits left to be subsequently ascertained—Limitation.*

Where in a decree for possession of immovable property and for mesne profits the amount of mesne profits has been left to be subsequently ascertained, neither article 178 nor article 179 of the second schedule to the Indian Limitation Act applies to an application by the decree-holder to have the amount of mesne profits ascertained. *Puran Chand v. Roy Radha Kishen* (1) and *Fatima Bibi v. Abdul Majid* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Maulvi *Ghulam Mujtaba*, for the appellants.

Messrs. *C. Dillon, Karamat Husain* and *Abdul Majid*, for the respondent.

KNOX and AIKMAN, JJ.—The plaintiffs, who are appellants, brought a suit against their brother, the respondent, claiming certain property and mesne profits both past and future arising out of such property. On the 30th of June 1892 they got a decree from the Subordinate Judge for a portion of the property claimed with mesne profits for the same. They appealed to this Court in respect of that portion of their claim which had been dismissed, and this Court decreed the appeal in their favour. The present appeal arises out of an application to recover mesne profits past and future of that portion of the property which was awarded to the plaintiffs by this Court's decree. The judgment-debtor resisted this application on two grounds. The first was that the claim was barred by limitation, the second was that under the decree of this Court the plaintiffs were not entitled to any mesne profits. The former of these objections was repelled by the Court below, but the second was sustained, and it is in consequence of this that the present appeal has been filed by the plaintiff. We have satisfied ourselves by a reference to the memorandum of appeal that it related, not only to the claim for possession of

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\* First Appeal No. 312 of 1903 from a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Jaunpur, dated the 14th of May 1903.

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the property in respect of which their suit had been dismissed, but also to the mesne profits arising therefrom. The words of the decree which was prepared by this Court, and which is dated the 30th June 1894, run as follows :—“ It is ordered and decreed that this appeal be decreed ; that the decree of the Subordinate Judge of Jaunpur in so far as it dismisses the claim of the aforesaid plaintiffs-appellants for possession of Taluka Jhangai and the estate of Mufti Vilayat Husain be reversed ; that so much of the claim as aforesaid be decreed ; and that in all other respects the decree of the aforesaid Subordinate Judge be and it hereby is confirmed.”

The language of this decree might at first sight appear inconsistent, for while it decreed the appeal, which, as we have shown above, related to mesne profits, without any reservation, it refers later on to possession only of that portion of the property regarding which plaintiff's claim had been dismissed. After hearing the learned counsel on both sides, and giving the words contained in the decree full consideration, we are of opinion that the decree of this Court must be interpreted as allowing the plaintiff's claim for mesne profits ; to put any other interpretation would be to nullify the opening words of the decree. Where in the decree it is stated that in all other respects the decree of the Court below is confirmed, this imports an award of mesne profits on all property the possession of which was decreed to the plaintiffs. This, we think, is the reasonable, as it is undoubtedly the equitable, construction to be put on the decree.

The learned counsel for the respondent endeavoured to support the order of the Court below on the ground that had been decided against him in that Court, namely, that the application was barred. The decree, which we have held carried with it a right to have mesne profits assessed, was passed on the 12th June 1894, and it is admitted that the plaintiffs got possession of the property in that year. The application to have mesne profits assessed was not made until the 28th of September 1900. If either article 178 or 179 of the second schedule to the Limitation Act could be held to apply, no doubt the application is beyond time. The learned vakil for the

appellants relies on the Full Bench decision in *Paran Chand v. Roy Radha Kishen* (1), where it was held that neither of these articles was applicable, and that in fact the assessment of mesne profits which had been left for subsequent ascertainment was a matter which a Court was bound on the oral application of the decree-holder or without any such application to determine. This has been followed by this Court in *Fatima Bibi v. Abdul Majid* (2). We agree with these decisions. A construction of the law which might result in keeping such matters open for an indefinite time is at first sight somewhat startling, but it has to be remembered that when a claim is made for possession of property and mesne profits the Court may dispose of the whole of the claim at once; it may also, as a matter of convenience to itself, leave over the question of mesne profits for subsequent ascertainment. When a claim is made by a plaintiff for possession and mesne profits the plaintiff is entitled to have an adjudication on the whole of his claim, and until the question of mesne profits has been decided the suit cannot be said to have been finally disposed of. This disposes of the appeal.

The result is that this appeal is decreed with costs, the order of the Court below so far as it refuses the mesne profits referred to above is set aside, and the case remanded to that Court with a view to the amount of such mesne profits being ascertained. When the Court has ascertained the amount of mesne profits it will deal with the rest of the decree-holders' application, and will award costs to the decree-holders in proportion to the amount decreed in their favour.

*Appeal decreed.*

(1) (1891) I. L. R., 19 Calc., 132. (2) (1892) I. L. R., 14 All., 531; at p. 537.

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