

proposition of law is in no way inconsistent with the other proposition which we have laid down, namely, that a deceased Hindu's wife (in the absence of male heirs) represents him in a suit for specific performance of a personal contract made with him. The court, therefore, refused to exercise a jurisdiction which it had, namely, to bring the applicant on to the record. We allow the application, set aside both orders of the court below, and direct that court to bring the name of the applicant on to the record in the place of her deceased husband and then to proceed to hear and determine the suit according to law. The applicant will have his costs in this Court. Other costs will follow the result.

Application allowed.

APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir
Pranada Charan Banerji.*

KRISHNA PAL SINGH AND OTHERS (DECREE-HOLDERS) v.

DESAJ RANJIT SINGH AND OTHERS (JUDGMENT-DEBTORS)*

Execution of decrees—Mesne profits—Decree fixing the mesne profits at a specified sum—Judgment-debtor not entitled to deductions on account of payments made by him.

Where a decree for mesne profits itself names a definite sum at which such profits have been assessed, it is not open to the judgment-debtor in answer to an application for execution to claim to set off any payments, such as taxes or ground-rent, made by him, as payments which should have been made by the decree-holder; but the decree must be executed as it stands. *Kachar Ala Chela v. Sha Oghadbbhai Thakarshi* (1) distinguished.

THIS was an application in execution of a decree of the Privy Council, arising out of the appeal in the case of *Bilas Kunwar v. Desraj Ranjit Singh* (I. L. R., 37 All., 527). Originally the plaintiff had sued the defendant for the possession of a house situated in Allahabad by ejectment of the defendant. The Subordinate Judge in decreeing the plaintiff's suit fixed the mesne profits at Rs. 65 per mensem. In appeal by the defendant the High Court reversed the decree of the

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*First Appeal No. 208 of 1918, from a decree of Shekhar Nath Banerji, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Allahabad, dated the 18th of March, 1918.

(1) (1892) I. L. R., 17 Bom., 35.

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Subordinate Judge and dismissed the suit. The Privy Council reversed the decree of the High Court and restored the judgment and decree of the Subordinate Judge in its entirety. The plaintiff decree-holder applied for execution, claiming mesne profits, costs, and interest thereon. The defendant judgment-debtor pleaded that he was entitled to a large reduction on the ground that while he was in possession he had paid ground-rent, house-tax, and water-tax, and that he had spent large sums of money in annual repairs and improvements.

The Subordinate Judge allowed the defendant judgment-debtor's claim and materially reduced the amount claimed by the plaintiff decree-holder.

The decree-holder appealed.

Dr. *Surendra Nath Sen* (with him *Munshi Baleshwari Prasad*), for the appellant:—

The Subordinate Judge in his decree allowed mesne profits for the occupation of the house at Rs. 65 per mensem and that decree was confirmed by the Privy Council. We must take it that the court, in fixing the amount, took the ground-rent and the taxes into consideration. The proper course for the respondents would have been to challenge the finding of the Subordinate Judge in the High Court and the Privy Council. Not having done so, they cannot challenge the decree in the execution court. A court executing the decree cannot go behind the decree. The decree may be right or wrong, but the execution court must execute it as it stands.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him Mr. *Sham Nath Mushran*) for the respondent:—

In a case where the court awards mesne profits the judgment-debtor is entitled to make some deductions. In the present case the respondent has paid ground-rent for the house which is equivalent to Government land revenue. Ordinarily in the case of a decree for mesne profits against a trespasser in possession of immovable property the collection expenses incurred by him will be allowed; *Abdul Ghafur v. Raja Ram* (1). It is only when the trespass is of a particularly aggravated nature that the court in the exercise of its discretion may refuse to allow expenses.

any rate mesne profits are in the nature of damages which the court may mould according to the justice of the case. See *Girish Chunder Lahiri v. Shoshi Shikhareswar Roy* (1). In support of my contention I further rely on *Ataf Ali v. Lalji Mal* (2) and *Kachar Ala Chela v. Sha Oghadbbhai Thakarshi* (3).

Dr. *Surendra Nath Sen*, was not heard in reply.

RICHARDS, C.J., and BANERJI, J.:—This appeal arises out of execution proceedings. The main question relates to mesne profits. In a suit for ejection from a house the learned Subordinate Judge made the following decree:—"It is ordered that the plaintiff do get from the defendants Rs. 65, the rent for October, 1905, and the movables specified below, otherwise Rs. 250 the value thereof, as well as mesne profits *pendente lite* and future up to the date of possession at Rs. 65 a month, together with future interest at the rate of eight annas per cent. per mensem." This decree was set aside by this Court and the suit dismissed. On appeal to His Majesty in Council the decree of this Court was set aside and the decree of the trial court restored with costs. The decree-holders are now seeking to execute the decree. The respondent, Dr. Ranjit Singh, claimed to deduct from the mesne profits of Rs. 65 a month certain payments which he alleges he had made in respect of repairs, taxes, ground-rent and other matters and interest thereon. His contention found favour with the court below, and the sum of Rs. 9,957-1-7 were allowed to be deducted against the Rs. 65 per mensem. We think that the decision of the court below was not correct. The court had to execute, as it stood, the decree which had become the final decree in the suit, namely, the decree of the Subordinate Judge. The decree could not be varied in any way. It may well be that the whole or a considerable portion of the deductions allowed by the court below might have been allowed if the court was finding what mesne profits should be allowed to the plaintiff. But the decree of the learned Subordinate Judge fixed the mesne profits at Rs. 65 per mensem and that decree has become final. Certain authorities have been cited

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(1) (1900) L. R., 27 I. A., 110; (2) (1877) I. L. R., 1 All., 518.
I. L. R., 27 Calc., 951.

(3) (1892) I. L. R., 17 Bom., 85.

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to us, including the case of *Kachar Ala Chela v. Sha Oghadbbhai Thakarshi* (1). A little consideration will show that all that these cases decided was that allowances for certain payments can be made in favour of the person in possession when the court is ascertaining what mesne profits it should award in a suit for possession of immovable property. Mesne profits are defined by section 2, clause (12), of the Code of Civil Procedure, and there can be no doubt that the Court is entitled to take certain matters into consideration when ascertaining what the mesne profits are to be. But in the present case this had already been done, or must be assumed to have been done, when the learned Subordinate Judge awarded mesne profits at the rate of Rs. 65 per mensem. It appears also that the court below in calculating costs allowed in the court of first instance omitted to include interest on those costs although awarded in the original decree. It seems also that the court below itself intended to give interest on these costs, because it is so stated in the judgment. The interest amounts to Rs. 836-8-6. The decree-holders are entitled to this sum also. With regard to interest on the costs in this Court and in the Privy Council, no mention of interest is made in the decision of their Lordships of the Privy Council, and we see no reason to interfere with the view taken by the court below with regard to this item. The claim for interest on the other amounts was disallowed by the court below, and we see no reason to interfere. The result is that we modify the order of the court below by allowing the two sums, namely, Rs. 9,957-1-7 and Rs. 836-8-6 in addition to the amount allowed by that court. To this extent we allow the appeal. Costs here and in the court below will be in proportion to failure and success.

Appeal allowed.