

APPELLATE CIVIL.

Before Mr. Justice Walsh and Mr. Justice Stuart.

LALTA PRASAD (DECREE-HOLDER) *v.* SRI GANESEJI AND ANOTHER
(JUDGMENT-DEBTORS).*

1922
March, 30.

Civil Procedure Code (1908), section 2, clause (12)—Mesne profits—Decree granting mesne profits silent as to interest—Interest realizable in execution proceedings.

Where a decree for mesne profits is silent as to interest thereon, the decree-holder is entitled to realize in execution interest at the usual rate of 6 per cent.

Grish Chunder Lahiri v. Shoshi Shikhareswar Roy (1) and Narpal Singh v. Har Gayan (2) followed. Abdul Ghafur v. Raja Ram (3) overruled

ON the 22nd of January, 1919, the plaintiff in a suit for possession and mesne profits obtained a decree awarding Rs. 1,995-1-0 as mesne profits to the date of the institution of the suit and future mesne profits at the rate of Rs. 38-1-10 per mensem from the date of the suit until delivery of possession. The decree, however, was silent as to whether any interest on the mesne profits was allowed. On the 28th of June, 1920, the decree-holder applied for execution. He claimed possession, Rs. 1,995-1-0 as mesne profits to date of suit, Rs. 1,143-7-0 as future mesne profits, and interest on the entire amount of mesne profits claimed. The execution court held that the decree-holder was not entitled to interest on Rs. 1,995-1-0, but was entitled to interest on the sum claimed as future mesne profits. The decree-holder appealed to the High Court.

Dr. M. L. Agarwala and Babu Indu Bhushan Banerji, for the appellants.

Munshi Gulzari Lal, for the respondents.

WALSH and STUART, JJ.—The point raised by this appeal is covered by authority. The question is, what is meant by the expression "mesne profits" when the decree is silent as to interest. Section 2, clause (12), of the Code of Civil Procedure defines mesne profits as follows:—"those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits". If there had been any doubt as to the meaning of those words, it has been set at rest, and ought no longer to be a matter of

* First Appeal No. 194 of 1921, from a decree of Lachmi Narain, Additional Subordinate Judge of Cawnpore, dated the 8th of February, 1921.

(1) (1900) I. L. R., 27 Cal., 951.

(2) (1903) I. L. R., 25 All., 275.

(3) (1900) I. L. R., 22 All., 262.

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controversy in India, by the decision of the Privy Council in the case of *Grish Chunder Lahiri v. Shoshi Shikhareswar Roy* (1), where the Privy Council pointed out, in construing section 211 of the old Code, which in this respect does not differ from the section quoted above of the present Code, that "its obvious effect was to provide that a simple decree for mesne profits should carry interest on them." It is true that at the same time there is discretion in the court to penalize a party by disallowing such interest. Their Lordships explain this in the same judgment by saying: "mesne profits are in the nature of damages which the court may mould according to the justice of the case." But the question in this appeal, as in the case decided by the Privy Council, is:—"What is the effect of a decree which grants mesne profits and says nothing about interest," which is what this decree does here. The court below, possibly inadequately instructed, followed the single Judge case of *Abdul Ghafur v. Raja Ram* (2) and appeared not to be aware of the two-Judge case of *Narpat Singh v. Har Gayan* (3), which would have drawn its attention to the Privy Council decision referred to. But having regard to the cases decided subsequently, the decision in the case of *Abdul Ghafur v. Raja Ram* (2) must be taken to have been overruled. The appeal must be allowed and execution directed to take place for the interest at 6 per cent. due by law. The case will go back to the lower court with this direction. The appellant must have his costs.

Appeal allowed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

1922
April, 15.

MOHAN LAL AND ANOTHER (PLAINTIFFS) v. MAHMUD HUSAIN AND OTHERS (DEFENDANTS).*

Muhammadian law—Hiba-bil-ewaz—Passing of consideration necessary to validate gift.

In the case of the transaction which is known to the Muhammadian law as *hiba-bil-ewaz*, actual payment of the consideration must be proved and the *boné fide* intention of the donor to divest himself *in presenti* of the property and to confer it upon the donee must also be proved. *Chaudhri Mehdi Hasan v. Muhammad Hasan* (4) followed.

* Second Appeal No. 421 of 1918, from a decree of H. E. Holme, District Judge of Bareilly, dated the 15th of March, 1918, modifying a decree of Baijnath Das, Subordinate Judge of Bareilly, dated the 31st of October, 1917.

- (1) (1900) I. L. R., 27 Calc., 951 (967).
- (2) (1900) I. L. R., 22 All., 262.
- (3) (1903) I. L. R., 25 All., 275.
- (4) (1906) I. L. R., 28 All., 439.