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PATIALA
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NARAIN
DAS
GULAB
SINGH

Bajpai, J.

of the Civil Procedure Code or under the provisions of order XXXIX, rule 1 of the Civil Procedure Code to a creditor who has obtained a decree against the landlord in another province. The question whether such a creditor should file a claim before the Special Judge in these provinces and whether his claim, if not made within the time and in the manner required by the U. P. Encumbered Estates Act, will be deemed for all purposes and on all occasions to have been duly discharged is not before us, and I express no opinion on the point. It will be for such a creditor to consider his best interests in the matter and to take such steps as he may be advised to do. We are told that the Punjab National Bank Ltd., Ambala, has not filed any claim before the Special Judge and the Darbar Patiala has filed a claim only under protest. I take it, therefore, that the two appellants before us have not filed any claim before the Special Judge, and under those circumstances I am of the opinion that the order passed by the court below was not justified.

BY THE COURT:—We allow this appeal and set aside the order of the court below. The appellant is entitled to his costs of the appeal.

*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

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March, 29

RAGHUBIR SINGH (DECREE-HOLDER) v. SECRETARY OF
STATE FOR INDIA (JUDGMENT-DEBTOR)*

Decree for damages for personal injury—Court must ascertain and award the total amount of damages, present and prospective—Prospective damages cannot be left to be ascertained in future in the execution department—Such part of decree a nullity—Cannot be executed—Jurisdiction—Execution court going behind the decree and questioning the jurisdiction—Civil Procedure Code, order XX—Cases in which preliminary decrees can be passed.

In a suit for damages for personal injuries it is the duty of the trial court itself to determine the amount of the defend-

*Appeal No. 1 of 1935, under section 10 of the Letters Patent.

ant's liability once for all and to pass a decree for such amount. At the conclusion of the evidence it is the duty of the court there and then to assess the amount of damages due to the plaintiff and in so doing to take into consideration any possible future incapacity of the plaintiff resulting from the injuries sustained. The determination of the further liability or prospective damages which may arise from such possible future incapacity cannot be directed by the trial court to be determined in future in the execution department, and that part of the decree which directs this to be done is null and void for want of jurisdiction and cannot be executed. In such a case the execution court is not bound to execute the decree as it finds it but can go behind it and question its jurisdiction.

The Civil Procedure Code makes no provision for the passing of a preliminary and a final decree in a suit for damages in respect of personal injuries; and although the list, mentioned in order XX, of cases in which preliminary decrees can be passed may not be exhaustive, any extension thereof must be governed by the principle of *ejusdem generis*.

Mr. B. S. Darbari, for the appellant.

Mr. S. K. Dar, for the respondent.

THOM, C.J., and GANGA NATH, J.:—This is a Letters Patent appeal against an order of a learned single Judge of this Court in an appeal from an order arising out of an execution proceeding.

The appellant sustained injuries in an accident. He was a lorry driver and his lorry collided with a train at a level crossing. The respondents are a railway company and the amount of damages claimed by the appellant was Rs.7,000.

The learned Judge who tried the case held that the railway company were liable in damages. He found that up to date the amount of damages suffered by the appellant was Rs.932. The learned Judge, however, did not decide the question of possible future damage. The learned Judge formed the opinion upon the evidence that in all probability the plaintiff's physical condition would have suffered permanent deterioration as a result of the injuries sustained by him in the accident. He was of the view, however, that he was not able, on

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the information before him, to decide the full amount of damages to which the plaintiff was entitled, until the lapse of a certain time when it would be possible more accurately to determine the permanent effects of the injuries sustained. He accordingly granted a decree for the sum of Rs.932 and left the question of any further damages to be decided by the execution court. His order ran: "I decree the claim for Rs.932 with proportionate costs, minus defendant's costs in proportion to the claim dismissed and provide that the defendant would be liable to pay such further damages with costs as the plaintiff may prove in the execution department as suffered after December, 1930, owing to his suffering caused by the accident concerned. The rest of the claim is dismissed."

The appellant made an application in the execution court for the execution of this decree and the learned Civil Judge held that the respondents were liable to pay a further sum of Rs.382-8-0 in the name of damages to the appellant. On appeal to this Court the learned single Judge has set aside the order of the learned Civil Judge and has dismissed the application for execution. The learned Judge took the view that the execution court had no jurisdiction to execute such a decree as had been passed by the trial court.

Learned counsel for the appellant contended that once a decree had been passed by the trial court it was the duty of the execution court to give effect thereto and that the execution court was not entitled to go behind the decree or refuse to execute it on the ground that the trial court had no jurisdiction to pass it. In support of this contention he referred to three cases, *Annada Kumar Roy v. Sheikh Madan* (1), *Lakshmibai Anant v. Ravji Bhikaji* (2) and *Kemgam Swamy v. Vaddadi Subbamma* (3). These were cases in which the claims were for mesne profits. Now, under the provisions of the Code

(1) A.I.R. 1934 Cal. 472.

(2) A.I.R. 1929 Bom. 217.

(3) (1929) I.L.R. 53 Mad. 838.

of Civil Procedure it is for the court trying the suit to decide the amount of mesne profits. In the cases cited above, however, the court left the decision of the question of future mesne profits to the execution court. It was held in these cases that this procedure amounted only to an irregularity; that the decree directing the execution court to fix the amount of future mesne profits was not a nullity and that it was the duty of the execution court to decide the question and to award mesne profits.

The decisions in these three cases may or may not be sound. We are, however, with respect disinclined to follow them. The legislature has made provision in the Code of Civil Procedure for the determination of the amount of mesne profits in a suit for possession and mesne profits. The assessment of the amount of mesne profits is a duty which is cast upon the trial court and it would appear to us that the trial court has no power to transfer that duty to the execution court. We are inclined to the view that the order of a trial court directing the execution court to assess mesne profits is an order without jurisdiction and should be treated as a nullity.

It is to be noted further in this connection that special provision is made in regard to suits for possession and mesne profits for the passing of a preliminary and a final decree. These cases, however, are to be clearly distinguished from the case such as the present where the claim is one for damages in respect of personal injuries. The Code of Civil Procedure makes no provision for the passing of a preliminary and a final decree in such a case.

Order XX makes provision for the passing of preliminary and final decrees in the case of suits for possession and mesne profits, administration suits, pre-emption suits, suits for dissolution of partnership, suits for accounting between principal and agent, and suits for partition. There is no provision in order XX for the passing of a preliminary decree in a suit for damages in

1938 respect of personal injuries or in respect of breach of contract.

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Learned counsel for the appellant contended, however, that it was a matter of authoritative decision that the above list of cases in which preliminary decrees might be passed was not exhaustive. This may be so, but in our view if the principle of granting a preliminary decree is to be extended beyond the aforementioned list that extension must be governed by the principle of *ejusdem generis*. Learned counsel for the appellant was unable to point to any authority in support of the proposition that a court might in a suit for damages for personal injuries leave the question of further possible damage resulting from the injuries to the future, to be decided either by itself or by another court. The law in England is abundantly clear. It has been referred to by the learned single Judge in the course of his judgment. The learned Judge referred to Underhill's Law of Torts. At page 115 the learned author deals with the question of "Prospective damages" and observes that more than one action will not lie on the same cause of action and therefore prospective damages must be ascertained and awarded at the time of the trial. There can be no question that it is the duty of the court in suits for damages for personal injuries to determine the amount of the defendant's liability once and for all at the time of the trial. The court no doubt before it reaches its decision upon the liability may desiderate further evidence, but once the evidence has been closed it is the duty of the court there and then to assess the amount of damages due to the plaintiff and in so doing to take into consideration any possible future incapacity of the plaintiff resulting from the injuries sustained.

Learned counsel for the appellant in the course of his argument referred to a Full Bench decision of this Court in the case of *Cantonment Board, Muttra v. Kishan Lal* (1) in support of his contention

(1) (1934) I.L.R. 57 All. 1.

that it was the duty of the execution court to execute the decree of the trial court whether the trial court had or had not jurisdiction to pass that decree. The circumstances of that case, however, were somewhat peculiar and the Full Bench certainly did not lay down the general proposition upon which learned counsel for the appellant invited us to proceed in determining this appeal. In the course of the judgment we observe that SULAIMAN, C.J., stated (at page 9): "But it is not possible to lay down broadly that an execution court can in no circumstances go behind the decree and must of a necessity shut its eyes to circumstances under which the decree came to be passed."

In the absence of clear and definite authority binding upon us we hold that in a suit for damages for personal injuries it is the duty of the trial court itself to determine the amount of liability of the defendant once and for all at the conclusion of the evidence. To hold otherwise and to sanction a procedure under which the determination of further liability might be decided by the execution court would clearly lead to trouble, inconvenience and uncertainty. A suit for damages for personal injuries would never come to an end. It would be open, if the execution court could execute a decree such as has been passed in the plaintiff's suit, to the plaintiff to make a succession of applications for execution of the decree as his physical condition gradually deteriorates, alleging that the continued deterioration was the result of the injuries sustained in the accident.

Upon the whole matter we are satisfied that the trial court had no jurisdiction to pass the decree under which the execution court was directed to determine a question of further damage. That part of the order of the trial court was clearly null and void for want of jurisdiction. It was open to the plaintiff to appeal against the order. He refrained from doing so. The order so far as further

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damage is concerned is one which cannot be executed by the execution court.

In the result we hold that the order of the learned Civil Judge in the execution court has been rightly set aside. The appeal is accordingly dismissed with costs.

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*Before Sir John Thom, Chief Justice, and Mr. Justice
Ganga Nath*

1938
March, 30

SURAJ PATISH NANDAN (PLAINTIFF) *v.* ATUL BIBI AND OTHERS (DEFENDANTS)*

Transfer of Property Act (IV of 1882), section 108—Lessee's suit for possession against lessor—Not a suit for specific performance of a contract but one to enforce a right in property—Limitation—Limitation Act (IX of 1908), articles 113, 144.

Where a lease is made by a registered instrument it effects an actual demise or transfer and the right to possession becomes vested in the lessee, which he can enforce by a suit for possession against the lessor or against a third person who may be in possession. Such a suit is one to enforce a real right of property and not one for specific performance of the contract of lease. Article 113 of the Limitation Act, therefore, does not apply to such a suit, but article 144 applies.

In cases where a lease may validly be made by an oral agreement accompanied by delivery of possession, the lease is not effective and there is no demise or transfer if possession has not been delivered; and in such cases a suit for possession would be one for specific performance of an agreement to lease.

Dr. N. P. Asthana, for the appellant.

Mr. Harmandan Prasad, for the respondents.

THOM, C. J., and GANGA NATH, J.:—This is a Letters Patent appeal by the plaintiff against the decision of a learned single Judge of this Court. On the 9th of October, 1918, one Muhammad Khan, the deceased husband of defendant No. 1, executed a perpetual lease in favour of the plaintiff of certain plots described by him as sir which were in his possession as zamindar.

*Appeal No. 35 of 1935, under section 10 of the Letters Patent.