

## REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge,  
and Mr. Justice Ziaul Hasan*

MAHARAJ PUTTU LAL (PLAINTIFF-APPLICANT) *v.* SRIPAL  
SINGH AND OTHERS (DEFENDANTS-OPPOSITE PARTY)\*

1936  
October 21

*Civil Procedure Code (Act V of 1908), section 152—Suit for possession and mesne profits—Court accepting oral prayer to determine mesne profits in execution department—Judgment and decree allowing possession but making no mention for determining mesne profits—Omission, if accidental—Amendment of judgment and decree, if can be made under section 152.*

Where in a suit for possession and mesne profits the counsel for the plaintiff made an oral request to the court to determine the amount of mesne profits in the execution department and this prayer was accepted by the court but the suit was decreed for possession and nothing was said either in the judgment or in the decree as to mesne profits, *held*, that the court can amend the judgment and the decree under section 152, Civil Procedure Code, so as to add that the amount of mesne profits will be determined on a separate application in the execution department, as that section is wide enough to cover such a case, which is undoubtedly a case of accidental omission of an order as to mesne profits. *Ram Singh v. Sant Singh* (1), relied on.

Mr. K. P. Misra, for the applicant.

Mr. H. N. Das, for the opposite party.

SRIVASTAVA, C.J., and ZIAUL HASAN, J.:—This is an application under section 115 of the Code of Civil Procedure for revision of an order of the Additional Civil Judge of Sitapur refusing to amend a judgment and decree under section 152 of the Code of Civil Procedure.

The plaintiff-applicant brought a suit for sale of certain property mortgaged by one Chandrika Singh to his uncle, after the latter's death, and obtained a

\*Section 115 Application No. 2 of 1935, against the order of Pandit Pyare Lal Bhargava, Additional Civil Judge of Sitapur, dated the 1st of October, 1934.

(1) (1930) Lah., 210.

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decree. In execution of that decree the property was put to sale and purchased by the applicant himself. Subsequently he brought a suit for possession of the property against the opposite parties on the ground that they were resisting him in obtaining actual possession, opposite parties 1 and 2 claiming as usufructuary mortgagees of the property and opposite parties 3 and 4 giving themselves out as thekadars of a portion of the property. In this suit the applicant also claimed mesne profits from the 20th of December, 1929, the date of sale up to the date of delivery of possession but fixed no amount of such profits. His pleader made an oral statement requesting the court to determine the amount of mesne profits in the execution department and this prayer was accepted by the court. The suit was decreed for possession of the land in suit on the 30th of March, 1932, but nothing was said either in the judgment or in the decree as to mesne profits.

On the 3rd of September, 1934, the plaintiff-decreeholder applied to the court to add in the judgment and decree words to the following effect:

"The amount of mesne profits will be determined on a separate application in the execution department."

This application was dismissed by the learned Additional Civil Judge on the ground that the amendment applied for could not be made under section 152 of the Code of Civil Procedure and this order of dismissal is the subject of this application.

We are of opinion that this application must be allowed and that section 152 of the Code of Civil Procedure is wide enough to cover the present case which is undoubtedly a case of accidental omission of an order as to mesne profits in the judgment. On the 30th of March, 1932, the date on which judgment was pronounced, the court recorded the following proceedings:

"The plaintiff's pleader requests that the inquiry about mesne profits may be left to be determined in the execution proceedings. I permit him to do so."

This was followed by the hearing of arguments and the pronouncement of the judgment. This shows that the court did really intend to award mesne profits to the plaintiff though at the time of writing the judgment it overlooked the question of mesne profits. It may also be mentioned that the suit was not contested by the defendants and in his judgment the learned Civil Judge after referring to the documentary evidence filed by the plaintiff said—

“All these documents prove the plaintiff's title to the land in suit and also the fact that he had obtained formal delivery of possession. P. W. 2 (plaintiff) proves that defendants 1 to 4 prevent him from taking possession. The plaintiff's case is thus established.”

In these circumstances we do not think any valid defence could be urged to the plaintiff's claim for mesne profits or that the learned Civil Judge could have really intended to refuse the relief for mesne profits. In *Ram Singh v. Sant Singh* (1) certain property had been sold in execution of a decree and possession of the property was given to the auction purchaser. One Ram Singh brought an objection under order XXI, rule 100 of the Code of Civil Procedure but it was dismissed. Thereupon he instituted a suit under order XXI, rule 102 for a declaration of his title to the property and also for possession thereof. The suit was decreed but by inadvertence the judgment omitted to mention that it was decreed for possession of the property also. Subsequently Ram Singh tried to obtain possession by execution of his decree but was met by an objection that the decree did not award possession to him. He thereupon brought an application for amendment of the judgment under section 152 of the Code of Civil Procedure and the trial court dismissed this application. The High Court, however, allowed the application holding that it was competent under section 152 of the Code of Civil Procedure. The case before us is exactly similar to

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the Lahore case, with the decision of which we agree, and we think the application should be allowed.

It was said that the proper remedy for the applicant was to have appealed against or applied for a review of the judgment and decree but we are not prepared to hold that that was the only remedy open to the applicant. In the Lahore case also no appeal had been brought by the applicant against the decree and yet his application for amendment was granted under section 152 of the Code of Civil Procedure.

The application is therefore decreed with costs and the amendment prayed for is allowed.

*Application allowed.*

## REVISIONAL CIVIL

*Before Mr. Justice Ziaul Hasan*

LALA KANHAIYA LAL (APPLICANT) v. CHHANGA AND  
ANOTHER (OPPOSITE-PARTY)\*

1936

October, 28

*United Provinces Agriculturists' Relief Act (XXVII of 1934), sections 2(2)(f), 3(1) and 30(2)—Judgment-debtor paying less than Rs.500 as rent—Instalments granted, whether can be extended beyond four years from date of decree—Costs—Court's power to reduce costs under section 30(2).*

Where a judgment-debtor pays rent to the extent of less than Rs.500, he is an agriculturist within the meaning of that term in section 2(2)(f) to whom chapter III of the Act applies and so according to the proviso to section 3(1) of the Act, instalments granted to such an agriculturist should not extend beyond four years from the date of the decree. Where in such a case the court makes the decree payable in twelve years the order is wrong and without jurisdiction.

Section 30(2) provides for reducing the amount of interest but not of costs and so the court acts without jurisdiction if it reduces the amount of costs awarded by the original decree.

Mr. P. D. Rastogi, for the applicant.

Mr. Ram Nath, for the opposite party.

\*Section 25 Application No. 52 of 1936, against the decree of Syed Shaukat Husain. Judge, Small Cause Court, Lucknow, dated the 15th of February, 1936.