

a fine under section 147. Having regard to the gravity of the offence, attacking the constable in the exercise of his duty, and the conviction having been sustained, it seems to me impossible to interfere in our discretion with the sentences.

In discussing the point relating to section 149 of the Code I should have mentioned that learned Counsel referred us to a decision of the Calcutta High Court which gives a different view of the section from that of the cases to which I have referred. However on the plain reading of the section I would prefer to follow the decisions of the Allahabad and Madras High Courts.

The rule is therefore discharged.

ADAMI. J.—I agree.

Rule discharged.

S. A. K.

APPELLATE CIVIL.

Before Das and Kulwant Sahay, JJ.

KHUB LAL SINGH

v.

RAGHUBANS NARAYAN SINGH.*

Code of Civil Procedure, 1908 (Act V of 1908), Order XX, rule 12—mesne profits and compensation, distinction between—Court, jurisdiction of, to give decree for compensation in respect of a period subsequent to the institution of suit—Order awarding compensation, whether is appealable.

An order determining the period within which compensation shall be payable is a decree and an appeal lies therefrom:

Bhup Indar Bahadur Singh v. Bijai Bahadur Singh (1), *Nand Kumar Singh v. Bilas Ram Marwari* (2) and *Raja Peary Mohan Mookerjee v. Manohar Mookerjee* (3), followed.

* Appeal from Original Order no. 88 of 1927, from an order of Babu Gajadhar Prasad, Subordinate Judge of Monghyr, dated the 12th March, 1927.

(1) (1901) I. L. R. 28 All. 152. (2) (1918) 3 Pat. L. J. 67.

(3) (1922-23) 27 Cal. W. N. 989.

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The provisions of Order XX, rule 12, Code of Civil Procedure 1908, relate to a claim for mesne profits only and have no application to a case where the defendant was not in wrongful possession of the lands claimed in the suit.

Therefore, a court has no jurisdiction to give the plaintiff a decree for compensation in respect of a period subsequent to the institution of the suit.

Appeal by the defendant.

The facts of the case material to this report are stated in the judgment of Das, J.

C. C. Das (with him *S. M. Mullick* and *S. N. Ray*), for defendant.

S. P. Sen (with him *H. P. Sinha*), for the respondents.

DAS, J.—This case has a long history; but the only point before us is a short one. The respondents instituted a suit against the appellant so far back as the 8th July, 1909, for the purpose of being put in joint possession of certain lands and for recovery of certain mesne profits as against the defendant. I do not propose to trace the history of the litigation. It appears that the defendant had *ticca* leases which expired in 1315 and the learned Subordinate Judge on the 4th February, 1919, held that the plaintiffs were not entitled to a decree for joint possession but were entitled to a decree for possession

“from the defendant no. 1 for the 63 *bighas*, 4½ *dhurs* land from the date of expiry of the lease in 1315.”

This decree was substantially affirmed by this Court on appeal. It is relevant to mention that in passing the decree which he did the learned Subordinate Judge was influenced by the decision of the Judicial Committee in *Watson and Co. v. Ramchund Dutt* (1).

The proceedings which have given rise to this appeal were then taken by the plaintiffs for the

(1) (1891) I. L. R. 18 Cal. 10.

ascertainment of compensation due to them from the defendant. The plaintiffs claimed mesne profits from 1316-1332 and asked the Court to hold that Rs. 1,71,669/6/9 was due to the plaintiffs. The first question which the learned Subordinate Judge had to try was whether the plaintiffs were entitled to any compensation

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“ for the period subsequent to the suit and if so up to what time.”

Now it will be remembered that a decree for joint possession was denied to the plaintiffs and the learned Subordinate Judge conceded that the provision of Order XX, rule 12, did not apply; but he thought that

“ the provision of Order XX, rule 12, should be applied so far as the circumstances of the case permit.”

In the end he held that the plaintiffs are entitled to compensation.

“ till the expiry of three years from the date of decree, which would be the date of the final decree of the High Court, i.e., 7th March, 1928;”

and as the application was filed in February 1926 he held that the plaintiffs were entitled to compensation for the entire period

“ for which the claim has been made.”

He referred the matter to a commissioner to ascertain the actual amount due to the plaintiffs.

From this order the present appeal has been preferred and it has been contended on behalf of the respondents that the order of the learned Subordinate Judge not being a final order no appeal lies to this Court. This contention must however be rejected. [See *Bhup Indar Bahadur Singh v. Bijai Bahadur Singh* (1), *Nand Kumar Singh v. Bilas Ram Marwari* (2) and *Raja Peary Mohan Mookerjee v. Manohar Mookerjee* (3)].

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But now the question arises as to whether the plaintiffs are entitled to ask the Court to ascertain the compensation due to them for any period after the institution of their suit. It has been contended before us on behalf of the appellant that the plaintiffs have no cause of action in respect of any claim that may have accrued to them since the date of the institution of the suit and that but for the provision of Order XX, rule 12, the Court would have no jurisdiction to grant the plaintiffs a decree directing an enquiry as to mesne profits from the institution of the suit until the delivery of possession to the decree-holder or the relinquishment of possession by the judgment-debtor with notice to the decree-holder from the expiration of three years from the date of the decree. It appears to me that Order XX, rule 12, relates to a claim for mesne profits, that is to say, it relates to a claim where the defendant is in wrongful possession of the disputed lands; but in this case the defendant was not in wrongful possession of the lands claimed in the suit. As I have said the Court in dealing with the title suit based its decision on *Watson's case* (1). It was held in that case that if there be two or more tenants in common, and one (A) be in actual occupation of part of the estate and is engaged in cultivating that part in a proper course of cultivation as if it were his separate property, and another tenant in common (B) attempts to come upon the said part for the purpose of carrying on operations there inconsistent with the course of cultivation in which A is engaged and the profitable use by him of the said part, and A resists and prevents such entry, not in denial of B's title, but simply with the object of protecting himself in the profitable enjoyment of the land, such conduct on the part of A would not entitle B to a decree for joint possession nor to an order for injunction. If this be so, it is impossible to say that the possession of A under the

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circumstances mentioned by their Lordships of the Judicial Committee is a wrongful possession. It is for this reason that the Judicial Committee gave the plaintiff in that suit a decree for compensation and not a decree for mesne profits. In my opinion the principle of Order XX, rule 12, is not applicable to this case.

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Now if that be so, then are the plaintiffs entitled to a decree for compensation in respect of a period subsequent to the institution of the suit? I think not; for it is the general rule that the Court has no jurisdiction to give the plaintiffs a decree in respect of a cause of action that had not accrued to them at the date of the institution of the suit. It is said that in *Watson's* case (1) the plaintiffs recovered from the Judicial Committee a decree for a sum of money calculated on a certain basis up to the date of the decree passed by the primary Court. It appears to me that that period was taken by the consent of the parties; and in any event there is no adjudication of the Judicial Committee on this point. It appears to me that in dealing with a case of this nature we must keep in view the distinction between compensation and mesne profits which has not been done in this case.

I would accordingly allow the appeal, set aside the order of the learned Subordinate Judge and direct that the plaintiffs do recover from the appellant compensation for the period from the date of the expiry of the lease up to the date of the institution of the suit.

The appellant is entitled to the costs of this appeal. The application for stay will be discharged.

KULWANT SAHAY, J.—I agree.

Appeal allowed.

(1) (1891) I. L. R. 18 Cal. 10.