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the meaning of which is not entirely clear, can in any way affect the presumption that in the circumstances of this case the lender was entitled to rely upon the fact that the District Judge had allowed payment of these debts out of the minor's estate. From no point of view it seems to me that that proposition could be supported. In the circumstances, therefore, it seems to be quite clear that the learned Judge in the Court below was right in holding that the lender was excused from making any enquiry, when the order of the District Judge allowing the payment of these debts out of the minor's estate was in existence, at the time that the money was paid.

The appeal, therefore, fails and must be dismissed with costs.

VARMA, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Khaja Mohamad Noor and Agarwala, JJ.

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January 2, 3, 4, 16.

SRIMATI GIRJA KUER

v.

SHIVA PRASAD SINGH.*

Suits Valuation Act, 1887 (*Act VII of* 1887), *section* 8—*suit for declaration of title and injunction—claim for damages for the period subsequent to the institution of the suit—amount of future damages, whether can be taken into account in determining the value of the suit for purposes of court-fee and jurisdiction.*

Where, in a suit for declaration of title and injunction for the removal of a certain dam, the plaintiff claimed damages for the period subsequent to the institution of the suit.

* Appeal from Original Decree no. 122 of 1931, from a decision of Babu Narendra Nath Chakravarti, Subordinate Judge of Patna, dated the 20th December, 1930.

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Held, that the amount of future damages could not be taken into account in determining the value of the suit for the purposes of court-fee and jurisdiction.

Plaintiff brought a suit for a declaration of his title and injunction for the removal of a certain dam, valuing the relief at Rs. 300. He also claimed Rs. 2,300 as damages for one year prior to the institution of the suit, and a sum of Rs. 3,000 approximately as future damages for the period subsequent to the institution of the suit. The suit having been dismissed, the plaintiff preferred an appeal to the High Court inasmuch as, according to him, the total valuation of the suit was Rs. 5,600. After the argument for the appellant had proceeded for some time, the respondent took a preliminary objection that the value of the suit was only Rs. 2,600 and, therefore, the appeal lay to the court of the District Judge and not to the High Court.

Held, allowing the preliminary objection, that the appeal to the High Court was incompetent inasmuch as the amount of future damages, namely, Rs. 3,000 could not be taken into account in fixing the value of the suit, and that the memorandum of appeal should be returned to the appellant for presentation to the proper court.

Bidyadhar Bachar v. *Manindar Nath Das*(1), *Dinanath Sahi* v. *Musammat Mayavati Kuar*(2) and *Musammat Urehan Kuar* v. *Musammat Kabutri*(3), followed.

Ramgulam Sahu v. *Chintaman Singh*(4), distinguished.

Appeal by the plaintiff.

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

Khurshad Husnain (with him *N. N. Sen*, *Sarjoo Prasad*, *Mahabir Prasad*, *Choudhary Mathura Prasad* and *R. N. Lal*), for the appellant.

S. M. Mullick (with him *Nawal Kishore Prasad II*, *A. H. Fakhruddin*, *Janak Kishore* and *Pandey Nawal Kishor Sahay*), for the respondents.

(1) (1925) I. L. R. 53 Cal. 14, F. B.
(2) (1921) 6 Pat. L. J. 54.
(3) (1933) I. L. R. 13 Pat. 344, S. B.
(4) (1925) I. L. R. 5 Pat. 361, F. B.

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KHAJA MOHAMAD NOOR, J.—This appeal arises out of a suit for removal of a certain dam said to have been erected by the defendants across a channel which according to the plaintiff irrigated their village Taregna. The plaintiff also claimed damages caused to him by the continuance of that dam. The suit was resisted on various grounds which need not be mentioned in detail. The learned Subordinate Judge, before whom the suit was instituted, dismissed it and the plaintiff has preferred this appeal to this Court.

After the argument of the appellant had proceeded for some time, Mr. Sushil Madhab Mullick who appeared on behalf of the respondents, intimated to us that he had a preliminary objection to make regarding the competency of the appeal to this Court. He contended that the value of the suit was only Rs. 2,600 and, therefore, the appeal lay to the Court of the District Judge of Patna and not to this Court. We stopped the hearing of the appeal and heard the preliminary objection.

The plaintiff has valued the suit as follows:—

	Rs.
Value for the declaration of the plaintiff's rights and injunction for removal of the grandi ...	300
Damages or mesne profits for one year during which the grandi according to the plaintiff continued prior to the institution of the suit, viz., for the year 1935	2,300

making a total of Rs. 2,600 on which a court-fee of Rs. 217-8-0 was paid. The plaintiff further claimed mesne profits or damages for the period subsequent to the institution of the suit till the removal of the grandi which he roughly estimated at Rs. 3,000. The plaintiff stated that

" thus the total valuation of the suit is at present Rs. 5,600 ".

A question arose before the learned Subordinate Judge whether the valuation of the suit at Rs. 5,600 by adding the damages or mesne profits subsequent to

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the institution of the suit was correct. The learned Subordinate Judge relying upon certain observations of Mullick, J. in *Ramgulam Sahu* v. *Chintaman Singh*(1) held that future mesne profits also had to be estimated and allowed the valuation as mentioned by the plaintiff to stand. It is to be noted that there was no question of jurisdiction before him, as, whether the value of the suit was Rs. 2,600 or Rs. 5,600, he had jurisdiction to try it. Mr. Mullick has contended that the mesne profits or damages *pendente lite* cannot be taken into account in determining the value of the suit. He has based his argument on two grounds. His first contention is that no cause of action for damages *pendente lite* had accrued at the time of the institution of the suit and, therefore, the Court could not pass a decree for it. He has contended that determination of mesne profits for a period subsequent to the institution of the suit is provided by a special provision of law enacted in Order XX, rule 12, of the Code of Civil Procedure and is intended to avoid multiplicity of suits. Its principle cannot be extended to other similar claims of which cause of action has not accrued at the time of the institution of the suit. His second contention is that the value of the suit for purposes of jurisdiction is the value of the rights which the plaintiff claims to be entitled to at the time of the institution of the suit and not what he may become entitled to subsequent to the institution of the suit which must be dependent upon events which may or may not happen.

The first contention does not appeal to me. The value of a suit does not depend upon the competency of a Court to pass a decree for a particular claim. The claim may be absolutely untenable and the plaintiff may not be entitled to it on the face of it, but nevertheless if the plaintiff claims it, he has to value it and that value will determine the forum for the institution of the suit. Secondly, I do not think the question whether future damages can or cannot be decreed is

(1) (1925) I. L. R. 5 Pat. 361, F. B.

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free from doubt. As the matter will have to be determined in the suit itself on the result of the main issue, I do not wish to express any opinion. At least there is a decision of the Privy Council in *Raghubans Narain Singh* v. *Khub Lal Singh*(1) in which their Lordships extended the principle of mesne profits to cases of claim for use and occupation of land by a co-sharer in excess of his own share.

The second contention of Mr. Mullick, however, seems to me unanswerable. It does not require much argument to hold that the value of a suit is its value at the date of the institution of the suit and not what will become its value on some subsequent date. There does not seem to me any direct decision on this point but there are observations in certain decisions which support the view which I am going to take.

The first case referred to by Mr. Mullick is that of *Bidyadhar Bachar* v. *Manindar Nath Das*(2). There a suit for possession of land and mesne profits prior to the institution of the suit was instituted before a Munsif and decided. Later on an application was filed for determination of mesne profits subsequent to the institution of the suit. The value of such mesne profits as stated in the petition itself exceeded the jurisdiction of the Munsif. A question arose whether such an application was entertainable by the Munsif when apparently the amount claimed exceeded his jurisdiction. The matter went up to a Full Bench, and though the decision itself is not pertinent to the question before us, the first question framed for the decision of the Full Bench was rather in wide terms. It runs as follows :—

" Where a suit is brought in the Court of a Munsif for recovery of possession of land and mesne profits *pendente lite* are claimed or assessed at a sum beyond the pecuniary jurisdiction of the Munsif, has

(1) (1931) I. L. R. 11 Pat. 22, P. C.
(2) (1925) I. L. R. 53 Cal. 14, F. B.

the Munsif jurisdiction to fix such mesne profits and pass a decree for a sum beyond his pecuniary jurisdiction?"

Walmsley J. held that the subsequent petition for the ascertainment of mesne profits should be treated as a separate claim and could not be instituted before the Munsif but before the Court which had jurisdiction according to the claim made in the petition; but the majority of the Bench held that the Munsif was competent to entertain the application and ascertain the mesne profits. Though both sides agreed that the answer to the question just stated ought to be in the negative, the majority of the learned Judges answered it in the affirmative. Walmsley, J. was, however, of opinion that mesne profits *pendente lite* could not be taken into consideration in determining the value of a suit for purposes of jurisdiction. He said:

"There remains the question whether in determining the question of jurisdiction, the mesne profits *pendente lite* are to be added to the rest of the plaintiff's claim or treated separately. It is obvious that it is impossible for a plaintiff to make even an approximate guess at the mesne profits that may accrue before his suit is determined. Further those prospective mesne profits are not part of the cause of action on which his suit is brought. I hold, therefore, that they are not to be considered in determining the value of the suit, and deciding whether it has been brought before the right Court. If mesne profits *pendente lite* are not to be considered for those purposes it follows, I think, that when they are ascertained, the Munsif will have jurisdiction to pass a decree to the full extent of his pecuniary limits for mesne profits *pendente lite* over and above the decree already passed for the property and mesne profits prior to institution." B. B. Ghose, J., with whom the other learned Judges agreed, said:

"The first inquiry is, what is the value of a suit in which the plaintiff claims recovery of possession of

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immovable property and also asks for mesne profits *pendente lite*. It must obviously be the value of the property. The plaintiff is not required, nor is it possible for him to value even approximately the amount of mesne profits *pendente lite*, which must vary according to the period of time the defendant retains possession of the property. Moreover, the plaintiff has no right to such mesne profits at the date of suit and he is only allowed such profits in his suit by virtue of a special provision in the Civil Procedure Code. This provision has evidently been made with the object of prevention of a multiplicity of suits. When, therefore, the value of the property is one thousand rupees or less, the plaintiff must bring his suit in the Munsif's Court under the provisions of section 15 of the Civil Procedure Code, and he cannot resort to a Court of higher grade with reference to any prospective mesne profits."

These remarks, in my opinion, clearly apply to the facts of the present case and lead me to hold that the subsequent damages claimed by the plaintiff cannot affect the value of the suit.

Mr. Khurshaid Husnain, appearing on behalf of the appellant, has relied upon some observations of Mullick, J. in the case already referred to [*Ramgulam Sahu* v. *Chintaman Singh*(1)] on the basis of which the learned Subordinate Judge held the value to be correct. The late learned Judge seems to be of opinion that it was incumbent upon the plaintiff to value not only the past mesne profits but also the future mesne profits and pay court-fee thereon. But that view does not seem to have been shared either by Dawson Miller, C.J. or by Jwala Prasad, J. In that case the question was whether an application for ascertainment of future mesne profits should bear *ad valorem* court-fee. Referring to future mesne profits Dawson Miller, C. J. said:

(1) (1925) I. L. R. 5 Pat. 361, F. B.

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"No cause of action had arisen at that time with regard to future mesne profits, for no amount was due and no estimate could be made with respect to a future claim which might or might not arise. The Civil Procedure Code, however, provides by Order XX, rule 12, that where a suit is for the recovery of possession of immoveable property and for rent or mesne profits the court, in addition to granting a decree for possession and mesne profits up to the institution of the suit, may also direct an inquiry as to the mesne profits from the institution of the suit until either delivery of possession to the decree-holder, or relinquishment of possession by the judgment-debtor, or the expiration of three years from the date of the decree, whichever event first occurs. This provision was no doubt inserted in the Code in order to prevent multiplicity of suits, as without it a further suit would be necessary in order to recover the rents and profits for the period during which the decree-holder was kept out of possession after the suit. The relief provided by this enactment is not an immediate right to any ascertained amount, or to any amount which is capable of being estimated, but a right to an enquiry only, in case the plaintiff should be kept out of possession after the institution of the suit, and no special court-fee appears to be provided for such relief."

JWALA PRASAD, J. said:

"The learned Subordinate Judge had no jurisdiction to reject the plaint originally filed upon the ground that it did not bear the proper court-fee. The plaintiff claimed past mesne profits, which according to him, approximately amounted to Rs. 10,000 as required under Order VII, rule 2, of the Code of Civil Procedure and paid a court-fee thereon under section 7, clause (*iv*) (*f*), of the Court-fees Act. He also prayed for determination of his right to future mesne profits. The amount of future mesne profits was not ascertainable at that time on account of the

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uncertainty of time during which the plaintiff would be out of possession as well as the uncertainty of the profits which the defendant would be expected to reasonably earn from the land and appropriate. To take the extreme case, the land might be submerged by water and remain so after the institution of the suit till the plaintiff recovered possession of the property and in that case there would be no profit earned by the defendant which could be claimed as mesne profits by the plaintiff. Therefore to ask the plaintiff to state in his plaint the 'approximate amount of mesne profits' would be to ask him to value his relief upon an imaginary figure. This position is so absurd that the legislature has not thought it fit to compel the plaintiff to value the future mesne profits or to pay any court-fee thereon at the time of filing the plaint."

I have referred to these observations to show that future mesne profits being uncertain cannot be taken into account for the purpose of payment of court-fee and for the purpose of determining the value of a suit.

Mr. Mullick relied upon section 8 of the Suits Valuation Act which runs thus:

"Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs *v*, *vi*, *and ix*, and paragraph *x*, clause *(d)*, court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same."

It is obvious that this suit is not one of those which have been excepted in this section and, therefore, the value for purposes of court-fee will be the same as the value for the purpose of jurisdiction. Applying the analogy of future mesne profits to future damages it is clear that no court-fee is payable in respect of the damages *pendente lite*. It follows, therefore, that it cannot be taken into account for determining the value of the suit.

It was held in the case of *Dinanath Sahay* v. *Musammat Mayavati Kuar*(1) that a Munsif before

(1) (1921) 6 Pat. L. J. 54.

whom a suit has been instituted is competent to pass a decree for future mesne profit for any amount irrespective of his pecuniary jurisdiction and that an appeal would lie to the District Judge. This case is an authority for the proposition that mesne profits for the period subsequent to the suit are not to be taken into account in determining the value of the suit for the purposes of jurisdiction, and the forum of the suit determines the forum of appeal. The same proposition is also deducible from a Special Bench decision of this Court in *Musammat Urehan Kuar* v. *Musammat Kabutri*(1).

Long arguments have been addressed to us and a number of cases have been cited relating to suits for redemption of mortgages showing that the value of a suit for redemption of a mortgage and for recovery of surplus due from the mortgagee, for the purpose of jurisdiction, is the value of the mortgage money and not what is recoverable from the mortgagee as surplus amount realized by him from the mortgaged property. I do not wish to go into those cases in detail because, in my opinion, mortgage suits stand upon quite different footing. They are governed by their own specific Articles of the Court-fees Act. The present case seems to me quite simple coming within clear provisions of the Suits Valuation Act. The value of this suit is the value for the purpose of court-fee and court-fee is not payable and, as a matter of fact, has not been paid in respect of future damages. The Court could not have asked the plaintiff to pay court-fee on that amount. As I have said, the value of the claim is the value the plaintiff claims on the date of the suit, and it cannot be dependent on what may or may not happen after the institution of the suit. The suit could have been disposed of on admission of the defendant on the very day it was instituted. For purposes of Privy Council appeals it has been definitely held that mesne profits accruing subsequent to the institution of the suit cannot be taken into account.

(1) (1933) I. L. R. 13 Pat. 344, S. B.

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In my opinion the objection prevails and the value of the suit is held to be Rs. 2,600 on which court-fee has been paid and, as I find, on which the pleader's fee was assessed in the Court below. The memorandum of appeal will be returned to the appellant or his Advocate for presentation to the proper Court with an endorsement of the date on which it was presented to this Court and the date on which it is returned.

We have considered the question of costs. No doubt the plaintiff made a mistake in instituting the appeal to this Court, but objection was not taken by the respondents at any earlier stage. Even at the time of the hearing of the appeal the matter was not brought to our notice till the argument had advanced to a considerable extent. In the circumstances, the parties should bear their own costs of this Court.

AGARWALA, J.—I agree.

Preliminary objection upheld.

Memorandum of appeal returned.

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November, 5, *January*, 9, 10, 25.

APPELLATE CIVIL.

Before Fazl Ali and Rowland, JJ.

NANDO KAHAR

v.

SRI BHUP NARAIN SINGH.*

Limitation Act, 1908 (*Act IX of* 1908), *section* 28 *and article* 47—*proceeding under section* 145, *Code of Criminal Procedure*, 1898 (*Act V of* 1898)—*suit by unsuccessful party, against one who was not a party to the proceeding—suit instituted more than three years after the order of Criminal Court—article* 47, *whether operates as a bar—section* 28, *scope and significance of.*

* Appeal from Appellate Decree no. 762 of 1931, from a decision of Maulavi Shaikh Ali Karim, Additional Subordinate Judge of Ranchi, dated the 13th January, 1931, reversing a decision of Babu Anjani Kumar Sahay, Munsif of Hazaribagh, dated the 29th July, 1929.