

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

1887.
July 19.

VINA'YAK AMRIT, *DESHPA'NDE*, (ORIGINAL DEFENDANT), APPELLANT,
v. A'BA'JI HAIBATRA'V, (ORIGINAL PLAINTIFF), RESPONDENT.*

Decree—Declaratory decree—Execution—Separate suit—Mesne profits, meaning of—
Decree awarding mesne profits—Construction.

In 1878 the plaintiff obtained a decree declaring that he was entitled to receive, every year, from the defendant 12 per cent. of the rents and profits of a certain *inám* village. The decree also awarded mesne profits from the date of the institution of the suit.

In 1884 the plaintiff sought in execution of this decree to recover his share of the profits of the village for the years 1882-83 and 1883-84.

Held, that the plaintiff could not proceed to enforce his rights under the decree by way of execution. His remedy was by a suit on the right established by the decree. The decree had merely declared the right of the plaintiff to a certain share of produce, and payment was ordered of mesne profits computed according to certain principles. Such an award was not an award of a periodical payment *in æternum*. The very word "mesne" implied a terminus *ad quem* as well as *á quo*, and in the absence of a special order the terminus was the date of the decree.

THIS was an appeal from the order of Ráv Bahádur Ganpatráo A. Mánkar, First Class Subordinate Judge of Sátára, in *darbhást* No. 1153 of 1884.

The plaintiff filed a suit in 1864 to recover his share of the income of certain *inám* villages according to the terms of an old partition deed of the year 1817, supplemented by a subsequent agreement made between the parties in 1833. He asked (*inter alia*) for a yearly payment of Rs. 1,237-12-0 in perpetuity out of the revenues collected by the defendant.

The Court of first instance passed a decree in plaintiff's favour, declaring him entitled to receive yearly from the defendant one-fourth of the income of the village of Bichukli, and that he was also entitled to a fourth share of the income of two other *inám* villages, *viz.*, Sonake and Arle.

On appeal, the High Court in 1878 amended this decree by declaring that the plaintiff was entitled to 12 per cent. of the revenues of Bichukli and 16 per cent. of the revenues of each

* Appeal, No. 91 of 1886.

of the two villages Sonake and Arle, and that the plaintiff was entitled to recover mesne profits from date of the institution of the suit⁽¹⁾.

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According to the shares thus fixed by the High Court's decree, the parties divided the income of the villages until the year 1882. A dispute then arose, which led to the present *darkhást* (No. 1153 of 1884).

By this *darkhást* the plaintiff sought to recover, in execution of his decree, his share of the rents and profits of the village of Bichukli for the years 1882-83 and 1883-84.

The Subordinate Judge ordered the defendant to pay to the plaintiff Rs. 603-13-10 with costs.

Against this order the defendant appealed to the High Court.

Ganesh Rámchandra Kirloskar for the appellant:—The plaintiff has obtained a merely declaratory decree, establishing his right to a certain share in the rents and profits of three *indám* villages. The decree, no doubt, awards mesne profits, but it gives them only up to the date of the decree. It cannot be extended beyond that date. The plaintiff claims what he terms mesne profits for 1882-84. That claim is not included in the decree. The decree does not command us to pay for those years. The plaintiff cannot, therefore, recover his share for those years by execution proceedings. He has mistaken his remedy. His proper course was to bring a separate suit. Refers to *Vishnu Shámhbhog v. Manjamma*⁽²⁾.

Mahádev Chimndji A'pte (with him *Gangáram Bápsobá Relé*) for the respondent:—The plaintiff sought for an annual payment in perpetuity of a certain share of the income of the villages. The Court of first instance substantially granted this prayer. That part of the decree is not reversed or modified in appeal. Effect has been given to the decree by annual payments in accordance with it as an order to pay in perpetuity. The decree is, therefore, capable of execution. A separate suit is not necessary.

(1) See Printed Judgments for 1878, p. 293.

(2) I. L. R., 9 Bom., 108.

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WEST, J. :—The plaintiff in this case no doubt sought a decree which should award payment to him by the defendant in perpetuity of a certain part of the produce of the village of Bichukli. But what was decreed by the Court of first instance was that the plaintiff had a right to an annual payment from the defendant of produce to be estimated in the way therein prescribed. On appeal to this Court, the decree was modified as to the determination of the relative proportional rights of the parties, and payment was ordered of mesne profits computed according to the principles thus laid down. This adjudication took place in 1878. It appears to have been used by the parties as a standard for the division of profits for some time afterwards, but as to the years 1882-84 a dispute arose, and the plaintiff sought to enforce his right under the decree by execution proceeding against the defendant. The Subordinate Judge has adjudged in favour of the plaintiff as judgment-creditor, but it does not seem possible to uphold his judgment. The award of mesne profits, however to be computed, is something quite different from an award of a periodical payment *in æternum*. The very word "mesne" implies a terminus *ad quem* as well as *á quo*, and the terminus in the absence of a special order is the date of the decree. It is not possible to extract from the decree a command to pay any sum in or for 1882-84. The plaintiff could not, therefore, proceed by way of execution. His remedy was by a suit on the right established by the decree of this Court.

We reverse the decree in execution of the Subordinate Judge. Each party is to bear his own costs of these proceedings throughout. Moneys recovered under the order of the Subordinate Judge must be refunded.

Order reversed.