

APPELLATE JURISDICTION (a)

Civil Petition No. 153 of 1866.

B. LAKSEMI NARASIMHALU *against* CHATRÁZU JAGAN-
NÁDHAM PANTALU *alias* SRINIVÁSA RÁU, and 2
others.

Ex parte RUDDRAVARAPU VISSAM RÁZ *alias* KONAMRÁZE.

A plaintiff, in possession under a decree for land and mesne profits, applied for further execution as to mesne profits and obtained an order from the Court of First Instance (the District Munsif's Court). This order was reversed by the Appellate Court (the Civil Court), leaving it still open to the Court of First Instance to make a further order. Plaintiff, however, instead of applying again for execution instituted a fresh suit for mesne profits in the Civil Court. The Civil Judge rejected the plaint.

Held that Section 11 of Act XXIII of 1861 warranted the rejection of the plaint, on the ground that the mesne profits to which plaintiff laid claim in the suit were payable in respect of the subject matter of the former suit.

THIS was a petition under Section 36, Act VIII of 1859,
against an order of H. Morris, the Acting Civil Judge of
Berhampore, on Extra Petition No. 77. of 1865.

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Sloan for the petitioners.

Parthasarathi Ayyangar for the 1st and 3rd counter-
petitioners.

The Court made the following

ORDER :—A plaintiff, who in Suit No. 424 of 1855 had a decree for land and mesne profits and had been for some time in possession of the land, applied for further execution as to mesne profits and obtained an order from the Court of the Acting District Munsif of Chicacole (the Court of First Instance) on the 11th January 1865.

This order was reversed by the then Acting Civil Judge of Berhampore, on the ground that the estimate of the value of produce, to be made over to plaintiff, had been unfairly arrived at, leaving it still open to the Munsif to make a further order upon a fair enquiry.

Plaintiff, however, seems to have considered this order as shutting him out finally from a remedy by means of the execution of his decree, and, in place of applying again for

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execution, instituted a fresh suit in the Civil Court for the mesne profits. The Civil Judge rejected this suit on the ground that the claim, which formed the subject of the suit had already been rejected by the Order of the 23rd November made by his predecessor. Looking only to the ground upon which this order is recorded to have been passed, it is clearly wrong, as the circumstance that plaintiff had been by a previous order held debarred from obtaining, in execution of a former decree, the profits to which he laid claim, would not debar him from instituting a suit for them, unless the claim formed part of the subject matter of the previous suit. It is apparent, however, that the order may be right though the reasons are wrong, and we think that Section 11, Act XXIII of 1861 warranted the rejection of the plaint, on the ground that the mesne profits, to which plaintiff lays claim in the suit, are payable in respect of the subject matter of the former suit.

We have taken time to look for precedents, and find two cases reported respectively in I M. H. C. Reps. 453 and II M. H. C. Reps. 435. The report of the first case is defective, as it omits the material fact that in the prior suit mesne profits, up to the date of the institution of the suit, had been sought for and decreed. Both these cases are thus in point and govern the present case, and the order of the Civil Court, rejecting the plaint, must consequently be held to be correct. For a full discussion of Section 11 of Act XXIII of 1861, which applies to cases of this nature, we may refer to a judgment of the Chief Justice and a full bench of the Bengal High Court, reported in VI Calcutta W. R. 109, *Miscellaneous Rulings*. It may perhaps be doubted if that Court does not take a more restricted view of the section than this Court seems to have done, but the case may be usefully referred to as showing the case that is needed in drawing up decrees by Courts of First Instance to provide for the payment of interest or mesne profits, and the importance of accuracy in the drafting of decrees is not perhaps sufficiently appreciated by all of the Lower Courts.

We affirm the order of the Civil Court and dismiss this appeal.

Appeal dismissed.