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finding as to the alleged payment of the first instalment. It may be that if the account book be found genuine, the evidence as to the payment already given will present a different aspect.

If the alleged payment be found not to have been made, then in accordance with our decision on the appellant's first contention, the application for execution should be rejected. If the alleged payment be found to have been made, the decree-holder's application should be allowed.

Costs to abide the result.

*Case remanded.*

J. V. W.

*Mr. Justice Ghose and Mr. Justice Rampini.*

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RAMESWAR MAHTON AND OTHERS (DECREE-HOLDERS) v. DILU  
 MAHTON AND OTHERS (JUDGMENT-DEBTORS).\*

*Munsif, Jurisdiction of—Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession—Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif.*

A suit, valued at Rs. 950, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to date of suit were claimed, but the plaintiff prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff. The Munsif gave a decree in accordance with the prayer of the plaintiff. The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly estimated them at Rs. 1,595, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than Rs. 1,000. *Held*, on appeal to the High Court, that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to the order made in his decree in the suit, notwithstanding that the amount of such mesne profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court.

\* Appeal from appellate order No. 31 of 1893, against the order of J. Tweedie, Esquire, District Judge of Patna, dated the 9th of November 1892, affirming the decree of Babu Chandra Kumar Roy, Munsif of that district, dated the 31st of August 1892.

THE suit out of which this appeal arose was brought in the Court of the Munsif of Patna for recovery of possession of land which was valued at Rs. 950 and for mesne profits from the date of suit to the date of recovery of possession. The suit was instituted on 29th September 1891, when the pecuniary jurisdiction of the Munsif's Court was Rs. 1,000. No fixed amount of mesne profits was estimated in the plaint, but the plaint prayed that the amount might be determined at the time of execution of the decree.

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The Munsif on 15th March 1892, when the jurisdiction of the Munsif's Court had been raised to Rs. 2,000, gave a decree for the plaintiffs for the amount sued for; the amount of mesne profits being left, as prayed, to be determined at the time of executing the decree. The plaintiffs subsequently asked the Court to ascertain and assess the mesne profits from the date of the suit, and estimated them in their petition at Rs. 1,595-10-3.

The defendants objected that the Court had no power to ascertain and assess the amount claimed as being in excess of its jurisdiction at the date of the institution of the suit.

The Munsif held that under s. 45 of the Code of Civil Procedure his pecuniary jurisdiction was limited to the jurisdiction he had when the suit was brought, *viz.*, Rs. 1,000; and that as a decree has already been made for Rs. 950 he had jurisdiction only to allow mesne profits in an amount not exceeding Rs. 50.

This decision was, on appeal by the plaintiffs, upheld by the Judge.

The plaintiffs appealed to the High Court.

Babu *Karuna Sindhu Mukerjee* for the appellants.

Babu *Lal Mohan Das* for the respondents.

The judgment of the Court (GHOSE and RAMPINI, JJ.) was as follows :—

This appeal arises out of an application made by the decree-holder for ascertainment and recovery of mesne profits in terms of an order made in the decree passed between the parties.

It appears that the suit, which was instituted in the Munsif's Court, was for recovery of possession of certain lands upon the ground of illegal dispossession, and it was valued at Rs. 950,

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being the value of the lands in question. No mesne profits were claimed up to date of suit, there being perhaps none to be recovered, the suit being instituted shortly after the dis-possession, but it was prayed in the plaint that the mesne profits from the date of suit to that of recovery of possession as might be ascertained in execution of the decree should be awarded to the plaintiff. And a decree was passed in accordance with the prayer of the plaintiff.

The decree-holder presented his petition to the Munsif, asking that the amount of mesne profits might be assessed, and he roughly estimated it at Rs. 1,595, and thereupon a question of jurisdiction was raised by the defendant; and both the Court of first instance and the District Judge on appeal have held that the Court of the Munsif has no authority to determine in this case the amount of mesne profits at any sum exceeding Rs. 50, the pecuniary jurisdiction of that Court being limited to Rs. 1,000 only, and the value of the claim in the suit being Rs. 950.

It appears to us that the arguments used by the lower Courts, and those that have been pressed upon us by the learned Vakil for the respondents, might perhaps apply to a proceeding for the recovery of mesne profits accruing before the date of the institution of the suit in which the decree was made. In such a case, a cause of action for the recovery of mesne profits arises at the time of the suit, and such a cause of action may or may not be joined with a suit for the recovery of the immoveable property (see sections 44 and 45 of the Code of Civil Procedure); and if such mesne profits are claimed in the same suit (the amount being only approximately given in the plaint) the Court may under section 212 of the Code either determine the amount by the decree itself, or may pass a decree for the property, and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders. In such a case, the final decree in the cause has to be made when the amount of mesne profits, if left undetermined at the time of the preliminary decree for the immoveable property, is ascertained. But even in such a case it is extremely doubtful whether, if the amount of mesne profits determined on further orders being added to the value of the property itself, as given in the plaint, exceeds the pecuniary jurisdiction of the Court in which the suit

was brought, the said Court would have no jurisdiction to make the final decree in the cause. But however that may be, where no cause of action for mesne profits has arisen on the date of the institution of the suit, and where none can therefore be claimed, as in this case, the Court may provide in the decree for the payment of mesne profits from the date of suit until the delivery of possession or until the expiration of three years from the date of decree (whichever event first occurs) with interest thereupon. We do not think that in such a case, at least, the Court which has to determine the amount of mesne profits should be guided in the matter of jurisdiction by the amount which may be approximately claimed by the decree-holder in his application, or which may be determined on investigation. The amount of mesne profits would depend upon the length of time during which the defendant, notwithstanding the decree, may choose to keep the plaintiff out of possession. It may happen that the defendant delivers up possession shortly after the decree, and in that event the amount recoverable by the plaintiff would be small and might fall within the pecuniary jurisdiction of the Court, while, if the defendant does not so deliver up possession, the amount may be much larger and exceed (the value of the suit being added to it) the jurisdiction of the Court. In most cases, the Court would not be in a position to say whether it has jurisdiction or not until the enquiry into the amount of mesne profits has been completed; and it is not probable that the Legislature should have intended that after all the enquiry has been made, the Court should be deprived of jurisdiction, or should not be permitted to order payment of a larger amount than what, added to the value of the suit, would fall within its pecuniary jurisdiction, and that the plaintiff should either be driven to another Court for the recovery of the amount exceeding the sum awarded by the Court executing the order, or should have no remedy at all in that respect. In the case of *Puran Chand v. Roy Radha Kishan* (1), decided by a Full Bench of this Court, the learned Judges observed as follows:—"The object of enacting section 211 appears to have been the prevention of unnecessary litigation and multiplicity of suits, and for this purpose they empowered the Courts to give, with the possession of the real property, such *wasilat* as the plaintiff would be entitled to

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(1) I. L. R. 19 Cal., 132.

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by law. The proceedings, therefore, in determining the amount of *vasilat* are not proceedings in execution of a decree in regard to any fixed amount, but merely a continuation of the original suit, and carried on in the same way as if a single suit were brought for mesne profits by itself." And it appears to us that if the Munsif had jurisdiction to try the original suit, he has equally jurisdiction to give effect to the order he made in the decree as regards mesne profits.

The learned Vakil for the respondent in the course of his argument relied upon certain observations of a Divisional Bench of this Court in *Mohini Mohan Das v. Satis Chandra Roy* (1), but it will be observed that the question which the learned Judges had there to decide was as to the *forum* of appeal, and not as regards the jurisdiction of the Original Court.

Upon the whole, we think that the Munsif had jurisdiction in this case to determine the amount of mesne profits claimable by the decree-holder under the order passed in the decree and to award such sum as may be found justly due to him.

The appeal will be allowed with costs and the case remitted to the Court of first instance for carrying out the order which we have just made.

J. V. W.

*Appeal allowed.*

*Before Mr. Justice Ghose and Mr. Justice Rampini.*

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 February.

GOPAL CHUNDER MITRA (AUCTION-PURCHASER, DEFENDANT No. 7)  
 v. RAM LAL GOSHAIN (PLAINTIFF) AND OTHERS (JUDGMENT-DEBTORS), DEFENDANTS Nos. 1 to 6.\*

*Bengal Tenancy Act (VIII of 1885), s. 173—Sale for arrears of rent—Purchase by benamidar for judgment-debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not.*

Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent, and the purchaser is found to be a mere *benamidar* for the judgment-debtor,—*Held*, in a suit to set aside the sale on that

\* Appeal from appellate decree No. 1293 of 1892, against the decree of Babu Kedar Nath Chatterjee, Subordinate Judge of Bankura, dated the 5th of May 1892, reversing the decree of Babu Pran Krishto Roy, Munsif of Khatra dated the 6th of October 1890.

(1) I. L. R. 17 Cal., 704.