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 IN THE  
 MATTER OF  
 THE PETI-  
 TION OF  
 BHOB-  
 SOONDURI  
 DABEE.

this, that any person has a sufficient interest who can show that he is entitled to maintain a suit in respect of the property over which the probate would have effect under the provisions of s. 242 of the Indian Succession Act.

I concur in allowing the appeal and remanding the case for trial on the merits. The appellants will of course have to prove the interest alleged by them.

*Appeal allowed.*

*Before Mr. Justice Mitter and Mr. Justice Maclean.*

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 Nov. 27.

BABOOJAN JHA (JUDGMENT-DEBTOR) v. BYJNATH DUTT JHA AND OTHERS (DECREE-HOLDERS).\*

*Execution-Proceedings—Mesne Profits—Amount awarded in Execution larger than that claimed in Plaint—Court Fees Act (VII of 1870), s. 11, para. 2.*

The plaintiff brought a suit for possession, and for a certain sum as mesne profits, which he assessed at three times the annual rent paid to the defendant by tenants in actual possession of the land. He obtained a decree for possession, and the decree ordered that the amount of mesne profits due to him should be determined in the execution-proceedings. On an investigation, a larger sum was found to be due to him for mesne profits than that claimed by him in his suit. The plaintiff, therefore, paid the excess fee as provided by para. 2 of s. 11 of Act VII of 1870; but *held*, the amount of mesne profits recoverable by him must be limited to the amount claimed in the plaint.

IN this matter the decree-holders had been plaintiffs in a suit to recover possession from the defendant (the judgment-debtor in this matter) of certain lands in Mouza Juggut, and also for mesne profits which it appeared they had in their plaint assessed at Rs. 309, or three times Rs. 103, the annual rent paid to the defendant by tenants in actual possession of the land. In this suit the plaintiffs, on the 24th July 1878, obtained a decree for possession, and it was also ordered by the decree that the amount of the mesne profits claimed was to be determined in the execution department. An Amin was accordingly deputed to make

\* Appeal from order, No. 174 of 1880, against the order of H. W. Gordon, Esq., Judge of Tirhut, dated the 30th April 1880, affirming the order of Baboo Tej Chunder Mookerjee, Munsif of Madhoobani, dated the 13th September 1879.

the necessary investigation, and he, after doing so, reported that the amount of mesne profits to which the plaintiffs were entitled for the three years, was a sum nearly three times as great as that mentioned in their plaint. In making this report, the Amin went on the principle that the plaintiffs having been in actual or khas possession of the lands claimed by them at the time when they were wrongfully dispossessed, were entitled to recover the full amount which they would have realized had they not been wrongfully dispossessed, and not what the judgment-debtor chose to receive according to his own arrangement while in wrongful possession.

The Munsif having overruled the objections of the judgment-debtor to this report, the latter appealed to the Officiating District Judge of Tirhut, and in this appeal, for the first time, raised, in addition to the objections previously urged by him, the further objection that the plaintiffs were bound by the claim as to mesne profits made by them in their plaint. The District Judge overruled all the objections of the judgment-debtor, and as to the one then first urged before him, ruled, that the appellant could not go behind the decree which had ordered that the amount of the mesne profits claimed was to be determined in the execution department without directing that the amount of mesne profits specified in the plaint should be the maximum amount recoverable in execution. In support of this view he referred to the following cases—*Hurro Gobind Bhukut v. Digumburee Debia* (1), *Lukcheekant Doss v. Deendyal Doss* (2), and *Pearee Soonduree Dossee v. Eshan Chunder Bose* (3); also to s. 11, para. 2 of Act VII of 1870 (The Court Fees Act), which provides, that “where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, *if the profits so ascertained exceed the profits claimed*, the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid.” It was clear, the Court remarked, from this section that the Legislature did not intend that the claimant should,

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(1) 9 W. R., 217.

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in the matter of mesne profits, be limited to the amount claimed in his plaint, and as in the case before it, the excess fee had been paid by the decree-holders, it dismissed the appeal with costs.

From this decision the judgment-debtor appealed to the High Court.

*Baboo Anund Gopal Palit* for the appellant.

*Baboo Umakali Mookerjee* for the respondents.

The judgment of the Court (MITTER and MACLEAN, JJ.) was delivered by

MITTER, J.—In this case the appellant has been adjudged liable for about Rs. 1,200 as mesne profits due for three years on account of the respondents' share, three annas eight gundas one dumri, in Mouza Juggut, for which the respondents got a decree on 24th July 1878.

The only contention raised before us is, that the respondents are bound by the amount of mesne profits claimed by them in the plaint, *viz.*, Rs. 309.

For the appellant two cases have been cited—*Karoo Lal Thakoor v. Forbes* (1) and *Gooroo Doss Roy v. Bungshee Dhur Sein* (2). In the former of these, it was laid down that "if the plaintiff had estimated his mesne profits in a general way with the view of determining the value of the suit, he would have been entitled to recover whatever sums had been realised or were capable of being realised by the defendant; but when he comes into Court, and knowingly fixes the rate of each bigha of land, he is bound by his own assessment." Loch, J., who was one of the Judges in this case, seems to have decided a subsequent case, that of *Hurro Gobind Bhukut v. Digumburee Debia* (3), in an opposite sense; but he joined in deciding the latter case, that of *Gooroo Doss Roy v. Bungshee Dhur Sein* (2), on the same principles as were laid down in *Karoo Lal Thakoor v. Forbes* (1). The respondent meets the contention by reference to two decisions of this Court—*Lukheekant Doss v. Deendyal Dass* (4).

(1) 7 W. R., 140.

(2) 15 W. R., 61.

(3) 9 W. R., 217.

(4) 14 W. R., 82.

and *Pearee Soonduree Dossee v. Eshan Chunder Bose* (1). In the former of these cases it was laid down, that "even with respect to the claim as stated in the plaint that would be subject to the result of further investigation;" and in the latter case, D. N. Mitter, J., laid down that where the decree did not limit the amount, and the plaint stated the amount approximately, the Court executing the decree could not go behind it.

Section 11 of the Court Fees Act was also cited in support of the respondents' contention.

In their plaint the respondents deliberately claimed Rs. 103 as the annual rent of the land from which he had been dispossessed. There was no approximate rate or amount mentioned.

We think that the general rule that a plaintiff cannot recover more than he claims in his plaint, ought not to be departed from except under special circumstances. The decision in the case of *Gooroo Doss Roy v. Bungshee Dhur Sein* (2) lays this down, as we think, correctly. In this case the plaintiffs appear to have been aware that the lands of which they sought possession were in the occupation of tenants paying an ascertained rent of Rs. 103 for plaintiffs' share; that being so, the plaintiffs demanded damages at that rate on account of the loss they had sustained from the wrongful possession of the defendant. It would have been better if the first Court had not reserved the ascertainment of the mesne profits for execution, and our decision is, that the plaintiffs can recover no more than Rs. 309 for the years 1280—82.

The appeal will, therefore, be decreed with costs, which we assess at two gold-mohurs.

*Appeal allowed.*

(1) 16 W. R., 302.

(2) 15 W. R., 61.

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