Revenue Officer to which these persons were parties, or in which they were represented. Therefore there was nothing in existence which could enable the Revenue Officer to decide a question of boundary between them under s. 40. Further, if there had been such proceeding before the Revenue Officer, and if he had decided anything he would have decided the fact of possession, and his order would operate only as to the fact of possession. And as the only thing as to which a suit is forbidden by s. 62 is the setting aside of an order deciding a boundary dispute, it follows that if there had been the most regular proceeding and the most formal decision on the question of boundary in a boundary dispute, though that would have been conclusive as to possession, under s. 62 it would have been no bar to a suit based upon title.

For these reasons we think that the decision of the lower Appellate Court cannot be supported, and must be set aside.

The Deputy Commissioner has not dealt with the other issues arising in this suit in a way which appears to us sufficient to enable us to dispose of the case. It is necessary therefore that the case should go back to him in order that he may decide those issues.

The appellant will have his costs of this appeal.

T. A. P. *Appeal allowed and case remanded.*

Before Mr. Justice Prinsep and Mr. Justice Beverley.

1886
June 8.

CHUNDER COOMAR ROY AND OTHERS (DECREE-HOLDERS) *v.* GONESH CHUNDER DASS AND OTHERS (JUDGMENT-DEBTORS).*

Possession, Suit for—Mesne profits—Decree silent as to mesne profits—Power of Court executing Decree—Hindu Law—Daughters' sons—Representatives—Reversioners, Liability of for acts of widow.

Plaintiff sued for possession of certain lands and for mesne profits. He obtained a decree for possession, but the decree was silent as to mesne profits. *Held*, that the Court executing the decree was not competent to entertain a claim for mesne profits made by the decree-holder.

A Hindu, governed by the Bengal School of Hindu law, brought a suit for possession of a certain taluk, but died before decree, leaving him surviving a

*Appeal from Order No. 344 of 1885, against the order of Baboo Rakhal Chunder Bose, Roy Bahadur, Subordinate Judge of Furreedpore, dated the 15th of June, and amended on the 24th of September 1885.

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

widow and two daughters. The widow was substituted in the suit instead of her husband, and she obtained a decree for possession. By a summary order made in execution of the decree the widow was put in possession of the taluk as well as of certain lands, which lands were claimed by a person not a party to the suit, as lands not belonging to the taluk. The claimant afterwards brought a suit for these lands against the widow. The widow died during the suit, and was succeeded by her daughters who also died after a decree for possession of the lands had been obtained by the claimant against them, when their sons were substituted in their stead as defendants. It appeared that the widow, the daughters and the daughters' sons had all been in possession of the disputed lands as a portion of the family estate.

Held, that the reversioners, the daughters' sons, were liable as the legal representatives of the daughters, and as such were liable for all costs incurred in the suit brought by the claimant for possession of the disputed lands.

IN this case the judgment appealed from was as follows:—

"In this execution case the judgment-debtors and the receiver of the Estate of Raj Chunder Dass have preferred the following objections: (1) The decree cannot be executed against the Estate of Raj Chunder Dass nor against his reversionary heirs; (2) that the mesne profits and damages for cutting down trees as well as Rs. 10,000 the value of the produce of kamar lands cannot be claimed in execution of the present decree; (3) that the decree-holders cannot get any interest on the costs awarded by the Privy Council decree; (4) that execution cannot be taken against the receiver without the permission of the High Court; (5) that the assignment by which the present decree-holders have acquired their title is not *bonâ fide* and genuine.

"It is necessary to give a short history of the litigation which has continued for a very long time between the parties and their predecessors in interest.

"A certain jote and one taluk originally belonged to the Moonsees, who, in 1825, executed a kutkobala or deed of conditional sale for a consideration of Rs. 20,000 to Raj Chunder Dass, the husband of Rash Money Dassi of the aforesaid taluk. Repayment not having been made Raj Chunder Dass took foreclosure proceedings under Regulation XVII of 1806 to make the sale absolute, and in 1835 instituted a regular suit for possession of the said taluk against the Moonsees.

"Raj Chunder Dass having died pending the suit, his sonless widow, Rash Money Dassi was substituted in his place as plaintiff who, in 1840, obtained a decree for possession of the taluk against the said Moonsees, which decree was confirmed on appeal in 1843 by the Sudder Court.

"While the suit was pending another suit for arrears of rent of the aforesaid jote was instituted, and a decree was obtained by one Ram Rutton Roy against the said Moonsees, and in execution of the said rent decree, the jote itself

was sold to one Jagat Chunder Roy in 1836, who, through the Court of the Deputy Collector which held the sale, obtained possession of the jote in 1839.

"After Rash Money obtained her decree for possession of the taluk in 1840, she applied for execution, and thereupon disputes regarding the boundaries of the taluk and jote lands arose between her and Jagat Chunder Roy, which disputes were subsequently terminated by a summary order of the Sudder Court in 1845, by which Rash Money Dassi was confirmed in the possession of the lands as part of her taluk.

" In the present execution proceedings before me possession of those lands and wasilat have been asked for.

"Jagat Chunder Roy sold the jote to one Ramdhun Sirkar, whose three sons afterwards sold it to one Tarrakant Banerjee, who, in 1856, instituted a regular suit against Rash Money Dassi and others to recover possession of those lands as part and parcel of his purchased jote, and also for mesne profits for 10 years and 7 months, commencing from Magh 1252 (January 1846) to Shrabun 1263 (July 1856) amounting to Rs. 24,308-13 annas.

"From the plaint in that regular suit it appears to me that subsequent wasilat up to the date of recovery of possession was not claimed. At least I find no distinct prayer for the same.

"The defence set up in that regular suit by Rash Money Dassi, who represented the estate of her husband Raj Chunder Dass, was that the lands claimed by the plaintiff Tarrakant were included in and were part of her husband's taluk, and property which he had got under and by virtue of the aforesaid *kutkobala* from the Moonsees, to whom I have said already both the taluk and the jote originally belonged.

"In 1857, the Principal Sudder Ameen of this district dismissed the suit, and the decree was confirmed on appeal by the Sudder Court in 1860, but the Privy Council reversed both decrees and remanded the case for trial on the merits. The Principal Sudder Ameen again dismissed the suit on the merits in the year 1867, but the High Court, on the 7th of August 1868, reversed the decree, and gave a modified decree in plaintiff's favour, which was subsequently confirmed by the Privy Council on the 22nd March 1879. Plaintiff Tarrakant Banerjee had, in the meantime, died, and his sons and heirs were substituted as plaintiffs in his place. Rash Money Dassi had also died, and her daughters were substituted as defendants in her place.

"When the Privy Council decree was sent to the High Court for execution, the sons and the heirs of Tarrakant Banerjee had assigned the property and their interests in the decree to the present decree-holders, and by an order of the High Court the present decree-holders were substituted in the place of the original decree-holders.

"All the daughters of Rash Money Dassi had in the meantime died, and the decree-holders have now asked to execute the decree against the reversionary heirs of Raj Chunder Dass and against his estate, which is now in the hands

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

of the receiver, making him also a party to the proceedings. Hence the objections which I have written at the beginning have been taken by them.

"I will first take those which relate to mesne profits and interest on the costs awarded by the Privy Council decree. Although I find from the plaint that there was a prayer for wasilat, yet as the High Court judgment and decree, dated 7th August 1868, which for the first time gave some substantial relief to the plaintiff, are silent about mesne profits, I cannot in execution give such profits to the decree-holders. The Privy Council decree is also silent about interest on costs incurred in England: when the decree is silent about interest, it cannot be recovered in execution. The Court executing the decree has no power to assess mesne profits unless ordered in the decree, and the period fixed in it—*Mosoodun Lall* v. *Bheekaree Singh* (1); *Seth Gokul Dass Gopal Dass* v. *Murli* (2); *Wise* v. *Brojendro Coomar Roy* (3); *Sadasiva Pillai* v. *Ramalinga Pillai* (4); *Fakharudin Mahomed Ashan* v. *The Official Trustee of Bengal* (5).

"It has been argued that the dispossession caused by Rash Money Dassi was a wrongful act in her own individual capacity, and therefore the estate of her husband, much less the reversioners, are not liable under the decree. But I find that there is nothing to show that Rash Money was not acting in good faith and in the belief that the lands which formed the subject of the suit really belonged to the estate of her husband (*vide* her written statement which she filed in the suit). No collusion or fraud has been proved against Rash Money and her daughters. I find that the suit was properly conducted by them in the belief that the lands in question formed part of Raj Chunder Dass's estate and for the benefit of the reversionary heirs. I also find that Rash Money simply carried on the suit instituted by her husband, and at the execution proceedings plaintiff's predecessors in interest were dispossessed under that belief which gave rise to all this litigation. I do not find that the suit was personal against the widow Rash Money.

"It has not been shown that the decree has been obtained against the widow or her daughters fraudulently or collusively. It is admitted that the lands in suit were in possession of Rash Money and her daughters, and on the death of the latter the reversioners are still in possession of those lands through the Receiver of the Court as part of the estate of Raj Chunder Dass. Under such circumstances, I hold that the reversioners and the estate of Raj Chunder Dass are liable in these execution proceedings, and the property and costs of the decrees will be recovered from them.

(1) B. L. R., Sup. Vol 602 : 6 W. R., Mis., 109.
(2) I. L. R, 3 Calc., 602.
(3) 11 W. R, 200.
(4) 15 B. L. R., 383 : 24 W. R., 193 ; L. R., 2 I. A., 219.
(5) I. L. R., 8 Calc., 178.

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

"But as the estate and the lands in suit are now in the hands of the Receiver there will be an order of the Court to him to give up possession of those lands and also to pay costs of the suit and of execution to the decree-holders out of the estate of Raj Chunder Dass. He is not personally liable, but the Court is bound to take notice of his existence, and on a reference to his letter of appointment, which he got under s. 503 of the Civil Procedure Code, I find that he has been authorized by the High Court to institute and defend suits, &c., relating to the estate of Raj Chunder Dass. For this Court or for the decree-holders to take any permission from the High Court is not necessary. The Receiver, if he likes, can take permission from the High Court to pay up the decretal amount and to give up possession.

"The pleader for the Receiver said that the Receiver has no objection to the decree-holders taking possession of the decretal lands, I therefore direct that possession be given to the decree-holders under the directions of the High Court decree dated 7th August 1868, according to the accompanying Ameen's map and report by the Civil Court Ameen, and costs of the decrees and of execution are to be realized from the estate of Raj Chunder Dass, and the Receiver be directed to pay them up to the decree-holders.

"If the defendants have done any damage to the decretal lands after the suit was brought or after the final decree was obtained by cutting down trees, &c., the decree-holders cannot recover them in the execution proceedings. I therefore disallow that portion of their claim which relates to damages as well as to the value of the produce of kamar lands.

"As regards the 5th objection, I find that the original decree-holders were the benamidars of the present decree-holders, and that the lands in question really belong to the latter. The original decree-holders have admitted these facts and the substitution was made in the High Court. It has not been shown that the assignment was not *bonâ fide* or genuine.

"It has been argued that the present decree-holders are only entitled to Rs. 5,000 under the decree, which they have paid to the original decree-holders for the assignment. But I find that by the said assignment the decree was not sold. The above sum was paid to them for allowing their names to be used in this litigation and for the trouble and annoyance which they had suffered. The property virtually belongs to the present decree-holders and the deed of assignment only proves the fact of benami. It is not a deed by which the decree was sold. I therefore disallow the objection of the judgment-debtor on this point, and hold that the present decree-holders are entitled to take possession of the property and to get the costs mentioned in the decrees as well as execution costs."

From this decision the decree-holders appealed to the High Court, on the ground that the Judge should have allowed mesne profits and damages in the execution proceedings as well as interest on costs decreed, while the judgment-debtors filed

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

cross-objections raising the same points as they relied on in the Court below.

Baboo *Srinath Das* and Baboo *Unnoda Pershad Banerjee* for the appellants.

Mr. *Woodroffe*, Mr. *Evans*, and Baboo *Jogendro Chunder Ghose* for the respondents.

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

This is an appeal arising out of the execution of a decree obtained by the appellants against Jugodumba and Pudmomoni, the daughters of Raj Chunder Dass and his widow Rash Money. It appears that, after foreclosure, Raj Chunder Dass instituted a suit for possession of certain mortgaged property. During the pendency of the suit he died, and his widow Rash Money was substituted as plaintiff and obtained a decree. In execution, she entered into possession of lands belonging to a third party, who thereupon brought a suit against her to recover those lands. She died while that suit was under trial, and a decree was obtained in this Court against her daughters Jugodumba and Pudmomoni, who, at her death, were the next heirs of Raj Chunder. A third daughter Sree Coomary, it may here be mentioned, predeceased Rash Money, and therefore did not succeed with her sisters. Jugodumba alone appealed to the Privy Council. Her appeal was dismissed. The appeal now before us relates to the execution of that decree as regards mesne profits and costs. The question has also been raised whether execution can be taken out against the Receiver who has, in the meantime, been appointed to the estate of Raj Chunder by an order of this Court in its Original Jurisdiction.

The Subordinate Judge has refused to allow the decree-holders mesne profits on the ground that they were not expressly given by the decretal order. It is not clear whether mesne profits were asked for in the plaint. The appeal before us has been argued on the assumption that they were, but as, after full consideration of the law on the subject as contained in the reported decisions, we are of opinion that such mesne profits cannot be allowed, we have not thought it necessary to consider whether

or not they were so claimed. The learned pleader for the decree-holders, appellants, relies on the authority of the case of *Rajah Leelanund Singh* v. *Moharajah Luchmessur Singh* (1), followed by the case of *Gurudas Roy* v. *Stephens* (2), in contending that although mesne profits were not expressly given by the decree, still inasmuch as they had been asked for in the plaint and were directly connected with the possession given to his clients, the lower Court was wrong in refusing to allow such mesne profits. These cases, however, are no direct authority for this contention. The case of *Rajah Leelanund Singh* merely decided that whereas in a former order of remand, their Lordships were unable to pass any final order in the case, but simply left it to the High Court to proceed in the suit as upon the result of the enquiry that they had ordered might seem just, it was competent to the High Court to allow mesne profits, and that they should, under the circumstances of the case, have been allowed. "Had the first part of the order in Council stood alone," their Lordships remark, "it would have been one of the consequential directions proper to be given to ascertain the amount of mesne profits at the time that possession of the villages was given; and inasmuch as one part of the order, namely, that with regard to possession, has been executed by the High Court, everything connected with that possession should be executed at the same time." The order passed by the High Court that they could not give mesne profits or any thing beyond what the Privy Council in its decree had given was therefore set aside. The case of *Gurudas Roy* v. *Stephens*, was one in which a party who, having obtained a decree which was set aside in appeal, had, notwithstanding, executed it, was directed to make restitution to the opposite party by putting him exactly in the same position in which he would have been if the decree had not been put in execution. It was held that it was unnecessary for the Appellate Court to pass any orders expressly on this point. So far, therefore, the cases relied upon by the appellant's pleader are not directly in his favour. On the other hand, the course of decisions is directly against

(1) 13 Moore's I. A. 490; 14 W. R., P. C. 23.

(2) 13 B. L. R., Ap., 44; 21 W. R., 195.

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

him. It was held by a Full Bench of this Court in the case of *Musoodun Loll* v. *Bhikaree Sing* (1), that in executing a decree, the Court that executes it has no power to alter or add to it, and that the only question in regard to mesne profits or interest which is left to be determined by the Court executing the decree is the question of amount. In *Sadasiva Pillai* v. *Ramalinga Pillai* (2) their Lordships of the Privy Council held that it was the settled law in India that where a decree is silent touching interest or mesne profits subsequent to the institution of the suit, the Court executing the decree cannot assess or give execution for such interest or mesne profits. In *Fakharuddin Mahomed Ahsan* v. *The Official Trustee of Bengal* (3) their Lordships state (see p. 190) that they "do not feel at all pressed by the authority of several cases to which their attention has been called, the doctrine of which has been affirmed by this Board, namely, that where a decree is silent on the subject of interest or of wasilat, interest or wasilat cannot be added in the course of execution. We are consequently of opinion that as the decree now under execution did not expressly give the appellants mesne profits, they are not entitled to realize them in execution of that decree, and that although they may have made mesne profits a portion of their claim together with recovery of the lands from which they had been unlawfully ejected, the Court executing the decree cannot properly assume that a decree for possession of those lands carries with it the right to obtain the mesne profits claimed in the plaint.

The appellant's pleader next contends that he is entitled to interest on costs in the lower Court, as such were expressly given by the terms of the decree of this Court. But we do not understand the order of the Subordinate Judge to refuse such interest except on the costs given by the Judicial Committee which are not ordered to bear interest. The appeal must therefore be dismissed.

It next becomes necessary to consider the objections raised by the learned Counsel for the respondents to the other portions of

(1) B. L. R., Sup. Vol., 602; 6 W. R., Mis., 109.
(2) L. R., 2. I. A., 219; 15 B. L. R., 383; 24 W. R., 193.
(3) I. L. R., 8 Calc., 178.

1886

CHUNDER COOMAR ROY v. GONESH CHUNDER DASS.

the order of the Subordinate Judge. Mr. Woodroffe contends that, inasmuch as the respondents are the sons of Jugodumba and Pudmomoni and the son's son of Sreecoomary (Judoonath, the son of Sreecoomary having died after succeeding to his inheritance and being now represented by his son) these persons cannot be regarded as legal representatives of the original judgment-debtors Jugodumba and Pudmomoni, because they have succeeded, not as heirs of those two ladies, but as heirs of their last male ancestor Raj Chunder. It is further contended that they are liable only to the extent of any property that they might have inherited from those two ladies. But these two ladies Jugodumba and Pudmomoni themselves succeeded by right of inheritance to their father Raj Chunder, and, for all purposes, represented that estate. We further observe that the respondents are still in possession of the lands which were wrongfully taken by Rash Money as included in the decree obtained by Raj Chunder for possession of the mortgaged property after foreclosure. They are not, therefore, in a position to disconnect themselves from the acts of Rash Money under which these lands were taken, and held as a portion of the family estate even at the present day. Under such circumstances, we think that the Subordinate Judge has rightly held that the respondents are the legal representatives of the judgment-debtors, and, as such, are liable to all costs incurred in the suit brought by the plaintiffs.

With reference to the objection that execution cannot proceed against the estate in the hands of the Receiver appointed by an order passed in the Original Side of this Court, we observe that the Receiver in the lower Court expressed his willingness to give up the estate. We think, therefore, that this objection cannot be sustained.

P. O'K. *Appeal dismissed.*