

(1912) 04 CAL CK 0003
In the Calcutta High Court

Anukul Chandra Chakravarti and Others	APPELLANT
Vs	
Nabin Chandra Bose and Others	RESPONDENT

Date of Decision : 25-04-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 12(2)

Citation : 15 Ind. Cas. 1

Hon'ble Judges : Stephen, J;Richardson, J

Bench : Division Bench

Judgement

1. In this case the plaintiff obtained a decree in a title suit and proceeded with a farther suit in which he sought to recover mesne profits of lands which he had recovered from the defendant. He succeeded before the Munsif in obtaining a decree for Rs. 766. On appeal to the lower Appellate Court, this was reduced to a sum of Rs. 296-10.

2. The question before us is whether the basis on which the Appellate Court arrived at the sum of Rs. 296 is a proper; basis for the purpose. In our opinion, it is not, It appears that before the plaintiff was dispossessed, he had settled the lands at a rental of Rs. 40 per year and it is on this basis that the Rs. 296 is calculated, that is, the Appellate Court considered not what the defendant may be taken to have made but what the plaintiff lost. " This is not the correct basis, as is shown by the definition of mesne profits in Section 2, subsection 12 of the Civil Procedure Code. The duty of the Court in estimating mesne profits is there so clearly indicated that we need not amplify the matter.

3. A second point has been raised on the question of interest being allowed on the mesne profits. This also appears to be settled by the definition which we have referred to.

4. It was, therefore, the duty of the Appellate Court to assess mesne profits as described in the Code and we remit the case to the lower Appellate Court in order that mesne profits may be ascertained accordingly.

5. The question of jurisdiction has been raised before us. The jurisdiction of the Munsif is limited to the sum of Rs. 1,000 and in this case the plaintiff claimed more than that sum as mesne damages. Without going into the law applicable to this question, the plaintiff has now reduced his claim for mesne damages to Rs. 700 which brings the whole suit involving the claim for mesne profits within the jurisdiction of the Munsif and the question of jurisdiction is given up. It will not, therefore, be necessary for the lower Appellate Court to try the question of jurisdiction but it will re-hear the appeal bearing in mind the definition to which we have drawn its attention and will decide the appeal according to law.

6. The appeal is, therefore, allowed; the case is remanded to the lower Appellate Court but the costs of the appeal will abide the result the hearing fee being assessed at two gold mohurs.