
(1927) 02 AHC CK 0002
In the Allahabad High Court

(Goswami) Gordhan Lalji Maharaj

APPELLANT

Vs

Bishambar Nath

RESPONDENT

Date of Decision : 10-02-1927

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : AIR 1927 All 716 : (1927) ILR (All) 597

Hon'ble Judges : Walsh, J

Bench : Division Bench

Judgement

Walsh, J.—We must allow this appeal. There is a great deal to be said for the Judge's view; in fact we should have been disposed to take the same view ourselves if we had been free to do so. We agree with the learned Judge that Order 2, Rule 2 looks as though it was directory and not mandatory, and that the plaintiff is not prejudiced if the Court does not choose to make its decree include post-decretal damages or mesne profits. It undoubtedly can do so, and there is a good deal to be said for the view that mesne profits, which only arise after the suit in case the defendant fails to give up possession, cannot be regarded as part of the plaintiff's claim when a suit is instituted. But, on the other hand, nobody can doubt that the plaintiff can claim and the Court can award mesne profits up to the date of obtaining possession, that is to say, a contingent liability if the defendant should continue to retain possession. On the whole we think that the cases are too strong and that we must follow the accepted practice in the Court.

2. The learned Judge has undoubtedly quoted a case which has nothing to do with it and has not referred to those which do. There is a two Judges case, Ram Din v. Bhup Singh [1908] 30 All. 225 which was a suit for redemption of a usufructuary mortgage. That is a distinct decision on Order 2, Rule 2. Mr. Justice Richards decided the same thing in a mortgage suit in Kashi v. Bajrang [1908] 80 All. 36. He did not refer to Order 2, Rule 2 which was then Section 43, but took a sort of general view, and said that in a suit for redemption there ought to be a complete and final statement of all accounts right up to the time of actual

redemption or sale. Mr. Justice Stuart, in a more recent case, *Girwar Singh v. Ram Piari Kunwar* AIR 1924 All 909, has applied Order 2, Rule 2 to mesne profits between the date of the decree and the date of possession, relying on the authority of the two cases we have just quoted, and he held that the failure of the plaintiff to make a claim in the suit for mesne profits up to the date of possession, prevents his putting it forward in a separate suit. We think it hard. It is entirely the result of loose pleading, probably due to ignorance of the true methods and objects of pleading. Whether it can be described as negligence is rather doubtful when one recognizes how low the standard of pleading is in the inferior Courts and the absence of any scientific training in the art. But, on the whole, we are not prepared to depart from the practice which appears to be established by the cases we have referred to.

3. One day perhaps somebody who takes sufficient interest in the question may induce some Bench to appoint a larger Bench to consider these decisions, but we are not prepared to do so to-day. We must, therefore, allow the appeal and restore the order of the first Court with costs in the two Courts.