

(1923) 02 BOM CK 0006
In the Bombay High Court
Case No : Second Appeal No. 259 of 1922

Hari Shridhar Prabhu Desai	Vs	APPELLANT
Sakharam Padmanna Magdum		RESPONDENT

Date of Decision : 20-02-1923

Acts Referred:

Citation : AIR 1923 Bom 391 : (1923) 25 BOMLR 449 : 73 Ind. Cas. 443

Hon'ble Judges : Norman Macleod, J;Crump, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The appellant in this case obtained a decree for possession of the suit property. An appeal was filed, and pending the hearing of the appeal the defendants remained in possession. The appeal was dismissed and then the appellant discovered that the present respondents, while in possession of the property pending the appeal, appeared to have committed waste by cutting down trees. Consequently the appellant took out a Darkhast to ascertain the damages alleged to have been committed by the respondents.

2. It was contended that this was not a question in execution, and that the appellant would have to file a separate suit. Both the lower Courts have dismissed the Darkhast on this ground. But we think that the question with regard to the waste committed by the judgment-debtor after decree was a question arising between the parties relating to the execution, discharge or satisfaction of the decree, and must be determined by the Court executing the decree, and not by a separate suit. The appellant is entitled under the decree to the property of which possession was directed to be given to him. If the property has depreciated in value or been damaged since the decree, owing to the wilful action of the defendants, it is a question in execution whether defendants are liable to make good the loss. Therefore we remand the Darkhast to be decided on its merits. The appellant is entitled to his costs in this Court and in the Court below. Costs in the trial Court to be costs in the cause.