
(1937) 01 CAL CK 0014
In the Calcutta High Court

Hemanga Bhusan Roy Choudhury

APPELLANT

Vs

Bhim Gharami and Others

RESPONDENT

Date of Decision : 26-01-1937

Acts Referred:

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 — Section 19

Citation : AIR 1937 Cal 761

Hon'ble Judges : M.C. Ghose, J;B.K. Mukherjea, J;B.K. Mnkherji, J

Bench : Full Bench

Judgement

M.C. Ghose, J.—This is an appeal by the plaintiff in an application for determination of the amount of mesne profits. The plaintiff sued for recovery of possession of certain lands and for mesne profits up to the date of the institution of the suit. The land was valued at Rs. 601 and the amount of mesne profits up to the date of the suit was stated to be about Rs. 499. The suit was valued at Rs. 1,000 and instituted in the Court of the Munsif. The Munsif found the title in favour of the plaintiff and decreed that the defendant do make over possession of the lands to the plaintiffs. The plaintiff then applied for determination of the mesne profits. The Court appointed a Commissioner to determine the mesne profits. The Commissioner found that the plaintiff was entitled to mesne profits at Rs. 915 per annum. This sum was allowed for the period of one year after the institution of the suit, but for the two years before the institution of the suit the Court did not allow the sum of Rs. 1,830 as the plaintiff would be entitled to on the report of the Commissioner but allowed a sum of Rs. 1,399 as that, together with the value of the land, would come up to Rs. 2,000 which was the jurisdiction of the Court. There was an appeal against that decision. The Court of appeal affirmed the decree of the trial Court. In this Court, it is urged that the plaintiff is entitled to the amount of Rs. 1,830 which the Commissioner found to be due for the period prior to the institution of the suit.

2. Many reported cases were cited before the Court. The Courts below have referred to the Full Bench decision in Anath Bandhu Dutta and Another Vs. Aisali

Namadas, . In that case the question was as to the mesne profits pendente lite and not for mesne profits before the institution of the suit. It was held that the Court could decree any sum for mesne profits for the period after the institution of the suit on the principle that the mesne profits for the period after the institution of the suit could not determine the jurisdiction of the Court, whereas the value of the land plus the mesne profits for the period up to the date of the suit would determine the jurisdiction of the Court. It is clear that the plaintiff in instituting the suit has to state the probable amount of the mesne profits up to the date of the suit. According to his calculation of that amount he can decide the Court where the suit will be instituted. If he deliberately places the amount low so as to institute the case in a Munsif's Court, he cannot afterwards claim a greater amount which would extend the jurisdiction of the Munsif. It was open to the plaintiff to suggest a larger amount of mesne profits for the period up to the suit and institute the suit in a Subordinate Judge's Court. As he deliberately chose the amount to determine the Court, he cannot afterwards claim an amount exceeding the jurisdiction of that Court. This principle is dear from the Full Bench ruling and from all other cases which the learned advocate has placed before us. I would therefore dismiss the appeal with costs.

B.K. Mukherjea, J.

3. I agree with my learned brother in holding that the appeal should be dismissed. The value of the suit for recovery of possession of immovable property and mesne profits would undoubtedly mean the value of the property itself and the mesne profits which accrued up to the date of the suit. The prospective mesne profits which could be Claimed by the plaintiff and with regard to which an investigation could be directed by the Court under the provisions of Order 20, Rule 12, C1. (c), Civil P. C, would not enter as an element in determining the value of the suit at the time when the suit was filed. There is therefore a difference between a claim for mesne profits which had accrued prior to the date of the suit and those which would accrue pendente lite. In my opinion the Full Bench decision in Anath Bandhu Dutta and Another Vs. Aisali Namadas, lays down the principle that it is the value of the suit-which in this case must mean the value of the property and the amount of mesne profits claimed up to the date of its institution-that determines the jurisdiction of the Court to entertain the suit. If the suit is once entertained, and properly by a Court, the mere fact that subsequent events over which the plaintiff would ordinarily have no control, and which would depend more or less upon the capacity of the defendant to offer resistance to the plaintiff's suit, would not in any way affect the jurisdiction and it would be quite competent to the Court to award in the shape of pendente lite mesne profits a sum of money which might exceed the pecuniary jurisdiction of the Court. This principle however is of no assistance to the present appellant who has been given a relief by the Courts below as regards the subsequent mesne profits which has actually exceeded the jurisdiction of the Court. But as regards the prior mesne profits, the Courts below have taken the correct view that in no case the value of the suit could exceed Rs. 2,000 which

was the limit of the Court's pecuniary jurisdiction and they were right therefore in awarding the plaintiff mesne profits before the date of the suit to the extent of Rs. 1,399 only.

4. Mr. Roy Choudhury has drawn our attention to a decision in Panchoram Thekadar v. kinu Haldar (1913) 40 Cal 56. That was a case under the old CPC where mesne profits were determined in execution proceedings and the facts were different. The learned Judges in their judgment expressly assumed the correctness of the principle referred to above and observed that if there were materials before them upon which they were in a position to hold that the value of the suit which included the value of mesne profits for the period prior to the institution of the suit had exceeded the pecuniary jurisdiction of the Court, they would have no hesitation in dismissing the plaintiff's claim.

5. The other decision of the Patna High Court in Hanuman Lal v. Ram Peari Koer AIR 1921 Pat 491 is also of no assistance to Mr. Roy Choudhury. For in that case the proceeding was for determination of pendente lite mesne profits only and there was no claim for antecedent mesne profits which did exceed the jurisdiction of the Court. There may be certain observations in some of these cases where under different circumstances relating to suits for accounts and redemption, different views might have been taken by Courts, but in this Court it has been consistently held that u/s 19, Civil Courts Act (Act 12 of 1877), the Court would have no jurisdiction either to entertain a suit or to pass a decree where the valuation exceeds the pecuniary limits as determined by the Act. In the circumstances the view taken by the Courts below must be taken to be correct and the appeal must be dismissed with costs.