

(1922) 03 MAD CK 0001
In the Madras High Court

Hussain Sahib

APPELLANT

Vs

Hammad Saheb and Others

RESPONDENT

Date of Decision : 27-03-1922

Acts Referred:

Citation : AIR 1923 Mad 43 : 74 Ind. Cas. 812 : (1922) 16 LW 312

Hon'ble Judges : Spencer, J

Bench : Single Bench

Judgement

Spencer, J.—The appellant relies on Gulusam Bivi v. Ahmadsa Rowther 9 L.W. 5411 (1919) M.W.N. 284 as an authority for saying that

mesne profits cannot be awarded in the final decree if there has been no direction in the preliminary decree either setting mesne profits or ordering

an enquiry into mesne profits.

2. If the plaintiff's right to mesne profits, is negated in the preliminary decree and no appeal is preferred against the order disallowing them, it is

obvious that he cannot raise the question again at the stage of passing the final decree; but if there is a prayer in the plaint (as here) for mesne

profits and the omission to provide for them in the preliminary decree is due to inadvertence (as appears to be the case here), I cannot see why up

till the passing of the final decree the matter of mesne profits should be deemed to be finally concluded. There is a decision in Civil Miscellaneous

Second Appeal No. 40 of 1919 Ramaswami Aiyar v. Subramania Aiyar 16 L.W. 297 : 43 M.L.J. 406 of another Bench which seems to hold

differently from Gulusam Bivi v. Ahmadsa Rowther (1919) M.W.N. 284 and if that was the only point before me I should feel inclined to refer this

civil revision petition to a Bench with a view to the correctness of the decision in

Gulusam Bivi v. Ahmadsa Rowther 51 Ind. Cas. 140 : 42 M. 296

: (1919) M.W.N. 284 being considered by a Full Bench.

3. In this case the decree, as amended by the High Court in appeal, directed the taking of accounts and respondent's Vakil states that the accounts

will show the profits arising from Immovable properties belonging to the joint family as well as the profits derived from the family trade, and that if

it turns out that the profits on the lands are kept apart and are not ascertainable from an examination of the accounts he will be content with what is

found to be due to him on the basis of the accounts. Be this as it may, I can find no reason to interfere at this stage in revision with the lower

Court's order directing the Commissioner to ascertain mesne profits also, as the final decree (if it is found to include a sum for mesne profits apart

from the sum due upon taking of accounts) will be open to regular appeal, and that will be the appropriate method of challenging the correctness of

interlocutory orders made in the course of trial. The civil revision petition is dismissed with costs.