

(1902) 05 CAL CK 0044
In the Calcutta High Court
Case No : Appeal from Order No. 315 of 1900

Laljee Shahay Singh and others

APPELLANT

Vs

F.C. Walker and others

RESPONDENT

Date of Decision : 09-05-1902

Acts Referred:

Citation : (1902) 05 CAL CK 0044

Judgement

1. This is an appeal against an order of the Subordinate Judge of Mozufferpore directing that mesne profits should be ascertained according to the fair rent payable for the land and not according to the value of the produce. The decree in the original suit which was made on the 30th August 1897 directed that the damages and mesne profits claimed and those for the period intervening between the date of the institution of the suit and the date of the delivery of possession or up to the time when three years would expire from the date of the decree should be ascertained in the execution proceedings. The cause of action is stated in the decree to have arisen on the 21st February 1894 and, as we understand the decree, it directed the calculation of mesne profits from that date. The land was zeraif land of the Plaintiffs (decree-holders), and the Defendants, it was found in the suit, were trespassers. As zeraif land, it was obviously in the direct possession of the Plaintiffs, decree-holders, and they were not, before dispossession, in possession through raiyats. The principle, therefore, that is laid down in the cases of *Ranee Asmed Kooer v. Maharanee Indurjeet Kooer* 9 W.R. 445 (1868) and *Raghu Nandan Jha v. Jalpa Pattap* 3 C.W.N. 748 (1897) referred to by the Subordinate Judge does not directly apply to this case. When land is raiyati and both the true owner and the trespasser are, under ordinary circumstances, merely rent receivers, assessment of mesne profits should be made on the basis of fair and reasonable rent, as held in these cases. Mesne profits, as defined in sec. 211, C.P.C., are "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits." When a raiyat, himself an actual cultivator, is dispossessed of his field, the measure of

damages should be the value of the crops, as held in *Nursing Roy and others v. John Anderson* 16 W.R. 21 (1871), *Soundaminee Dabee v. Anund Chunder Halder* 13 W.R. 37 (1870). The raiyat is entitled to be reimbursed to the extent of the loss actually suffered by him. The person in wrongful possession may easily place himself in the position of the true holder of the land and obtain, with the exercise of ordinary diligence, the same profits which the raiyat himself may make.

2. We can make no distinction between raiyati land held by a raiyat and the proprietor's private land ordinarily cultivated by him except as to the costs of cultivation. We think that in this case the Plaintiffs, decree-holders, are entitled to get from the Defendants as mesne profits the price of the crops raised on the land, less the expenses for cultivation [*Mussamut Rookumee Kooer v. Ramtuhul Roy* 17 W.R. 156 (1872)]. It is not a case in which the Plaintiffs were before dispossession getting only rent. They were entitled to, as apparently they were getting, the crops. They, however, as zemindars, would not cultivate the lands themselves and so had to pay the costs of cultivation by hired labourers or servants. Ordinarily the proprietors do not cultivate their private lands by their own hands. So although it is not a case of mesne profits for land in the actual cultivation of the Plaintiffs by their own hands, it is one in which the same principle should apply, the necessary costs of cultivation being taken into consideration, we can find no other distinction between the private lands of the proprietors and raiyati lands cultivated by the raiyat himself without the help of hired labour. In the former case, the price of hired labour or the wages of servants should be deducted from the market value of the crops; in the latter, deduction should be made for rent payable to the landlord. The Court should, in all such cases, have regard to the character of the possession held by the decree-holders before they were ousted and apply accordingly the principle upon which mesne profits should be ascertained [*Surja Prosad Narain Singh v. L.D. Reid* 6 C.W.N. 409 (1902)]. As regards the next point raised in the case, viz., as to whether the Plaintiffs are entitled to get damages for the crops alleged to have been taken away in February 1894, it does not appear that any issue was raised in the suit as regards such damages; nor did the Court come to any conclusion as to whether the Plaintiffs were entitled to such damages or not. The Subordinate Judge in his judgment said; "I cannot believe the story that the Defendants all on a sudden entered into the village forcibly and took possession of the same." That finding shows that the Court did not then believe the Plaintiffs' story of forcible taking away of the crops. All that the Court apparently meant by the decree for damages and mesne profits was that damages should be ascertained on the principle of assessment of mesne profits as defined in sec. 211, C.C.P. In the absence of a distinct finding that the Plaintiffs are entitled to any compensation for the Defendants' wrongfully taking away the crops raised by the Plaintiffs, we should not be justified in directing the lower Court to ascertain now any such damages. If however the Defendants dispossessed the Plaintiffs at a time when the crops were ready to be reaped and stored, the Defendants would be entitled to have credit for the costs of cultivation. For these

reasons we think that the order of the lower Court should be varied as regards the principle for the ascertainment of mesne profits, and we direct that an enquiry be held on the lines indicated by us. The costs of this appeal will abide the result. We assess the hearing fee at three gold mohurs.