

(1937) 04 CAL CK 0027
In the Calcutta High Court

Maharaja Bahadur Sir P.C. Tagore, Kt.	APPELLANT
Vs	
Mathura Kanta Das	RESPONDENT

Date of Decision : 27-04-1937

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : AIR 1937 Cal 478 : 173 Ind. Cas. 391

Hon'ble Judges : R.C. Mitter, J; Ghose, J

Bench : Full Bench

Judgement

R.C. Mitter, J.—This appeal arises out of proceedings taken u/s 144, Civil P. C, and involves a very short point, namely, what deduction the appellant is entitled to claim in the calculation of mesne profits. The relevant facts are these: The respondent, Mathura Kanta Das, is admittedly a tenant under the appellant, Maharaja Tagore, and the annual rent payable for his tenancy is Rs. 136 odd. In the year 1927 the appellant instituted a suit in ejectment. On 27th March 1928 the first Court dismissed the suit. But on appeal the said suit was decreed on 16th September 1929, that is to say, the appellant before us, Maharaja Tagore, got a decree in ejectment against the respondent. Mathura Kanta Das, it appears, was in khas possession of a portion of the lands included in his tenancy but the greater part of the same he was in possession through sub-tenants. Maharaja Tagore applied for execution of this decree for ejectment and he got possession through Court on 9th January 1931. Mathura Kanta Das however preferred a second appeal to this Court. By an order dated 2nd August 1933, this Court set aside the judgment and decree which had been passed by the lower appellate Court on 16th September 1929 and remanded the case to the lower appellate Court. The judgment of the lower appellate Court after remand was passed on 24th March 1931. By the said judgment Maharaja Tagore's suit for ejectment was dismissed and there was no further appeal by him to this Court.

2. The result of these proceedings was that Maharaja Tagore was in possession of the lands included in Mathura Kanta's tenancy from 9th January 1931 at least up

to the date when the final decree was made on 24th March 1934 by which his suit for ejectment was dismissed. Thereafter Mathura Kanta Das made an application u/s 144, Civil P.C. In this appeal we are not concerned with the question of restoration of possession; the parties are not agreed whether Mathura Kanta Das has been put in possession of the lands of his holding after final dismissal of the ejectment suit or not. But the question with which we are concerned in this case relates to the question of compensation or mesne profits which is payable by Maharaja Tagore to Mathura Kanta Das. The period of claim is from Magh 1337 B.S. to 1341 B.S. Both the Courts below have proceeded upon the principle that Maharaja Tagore must pay to Mathura Kanta Das for this period the amount of rents and profits which he could have, with due diligence, realized from the sub-tenants on the land in suit.

3. The lower appellate Court in modification of the figures arrived at by the Court of first instance has assessed the liability of Maharaja Tagore at Rs. 241-2-0 per year. In both the Courts below the appellant before us raised the question that he is entitled to a deduction of the amount of Rs. 136 odd per year, being the rent payable by Mathura Kanta Das to him. This claim on behalf of Maharaja Tagore has been negatived by both the Courts and the subject matter of this appeal is whether Maharaja Tagore is entitled to claim a deduction of the said amount. It may be stated that in the year 1934 Maharaja Tagore instituted a rent suit being No. 943 claiming rent from Mathura Kanta Das at the said rate for the said years. This rent suit was pending at the time when the lower appellate Court gave its decision but has been finally dismissed by this Court at the preliminary hearing held on 12th March 1937. The lower appellate Court, had dismissed the rent suit on the ground that Maharaja Tagore was not entitled to rent as he had dispossessed Mathura Kanta Das for the period in claim in the suit. Now Section 144 of the Code is in these terms, that on the reversal of a decree the Court shall

cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed, and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

4. The broad principle on which Section 144 proceeded is the principle, that the parties ought to be placed in the same position in which they ought to have been but for the decree or order of the Court which is subsequently found to be wrong wholly or in part. Not only the property which is the subject matter of the suit is to be restored on the reversal of the decree or order but the party ultimately successful ought to be secured the same benefit which he would have enjoyed from the property if he had not been dispossessed in pursuance of the decree or order subsequently reversed. It is for this purpose that the Court is authorized to direct compensation and mesne profits to be paid to the party who is ultimately successful. Whether it is compensation or mesne profits the Court in determining

the amount which has to be paid to the successful party has to determine two questions: firstly, what must be the gross profit which must be taken in the accounts and secondly what must be the deduction which the party in possession in pursuance of the reversed decree would be entitled to get, that is to say, in the accounts there must be a credit and debit side and item 1 of account on the credit side would be the amount which, in accordance with the definition of mesne profits, the party, who had taken possession in execution of the decree subsequently reversed, had actually or with due diligence could have received from the property in question, that is to say, item 1 of the account is what the person in wrongful possession had or could have realized from the property and not what the person who has been finally adjudged to be the rightful owner could have realized from the property. This is the position which is made clear by their Lordships of the Judicial Committee of the Privy Council in *Gurudas Kundu Chowdhury v. Hemendra Kumar Roy* AIR 1929 P C 300 in which they had to consider the question on what principle mesne profits have to be assessed. The same principle has been formulated in *Surendra Lal Chowdhury and Others Vs. Sultan Ahmed and Others*, where mesne profits or compensation payable u/s 144 of the Code was under consideration. But neither in *Gurudas Kundu Chowdhury v. Hemendra Kumar Roy* AIR 1929 P C 300 nor in *Surendra Lal Chowdhury and Others Vs. Sultan Ahmed and Others*, , cited above, any question arose as to what would be the amount of deduction which the person ultimately found to be in wrongful possession would be entitled to from what we have called above the first item on the credit side. That he is entitled to claim deduction can admit of no doubt.

5. Mesne profits are not the gross profits realized or which could be realized from the property by the person in wrongful possession but it is the net profit which a person in wrongful possession actually received or might, with ordinary diligence, have received. That the person in wrongful possession is entitled to claim some deduction, there can be no doubt, as for instance collection charges, and if the property is revenue or rent paying and the rent is payable to a third person, the revenue or rent, as the case may be, that be had to pay in respect of the property.

6. After these deductions interest has to be added for arriving at the final figure. The question, therefore, before us is when the landlord himself has taken possession of the tenanted land in execution of a decree in ejectment against his tenant, whether he is entitled to claim as deduction the rent payable to himself in respect of the tenancy to which rent he would have been entitled if there had not been any decree for ejectment. We think he is so entitled. The position of a landlord who takes possession in execution of a decree for ejectment which is subsequently reversed is much better than the position of a landlord who takes possession of the land of the tenant out of Court and through an act of forcible dispossession. The principle of suspension of rent would not apply to such a case. In *Manmatha Nath Dutt and Others Vs. Matilal Mitra and Others*, which was a case where the tenant who had been dispossessed by a forcible act of the

landlord from his tenancy, the tenant claimed mesne profits. B.B. Ghose, J., held that the landlord was entitled to claim by way of deduction the rent payable to him by the tenant during the period that he was in possession of the land in suit. Whether the view so expressed in such an extreme case is correct or not will have to be considered, if and when the question arises, but in the case before us, where the landlord had taken possession in execution of a decree which was valid and good at a time and so cannot strictly be said to be guilty of a wrongful act, we think he is entitled to get credit for the rent due to himself on the principle underlying Section 144, Civil P. C, which we have indicated above. We accordingly hold that the appellant before us is entitled to have a deduction from the amount decreed against him the amount of rent payable to him for the tenancy from Magh 1337 B.S. to 1341 B.S. or till the tenant is restored to possession. No other point has been pressed before us. The appeal is accordingly allowed in part and the order of the lower appellate Court is modified accordingly. The parties would bear their respective costs of the lower Courts. The appellant would be entitled to the costs of this appeal the hearing of which is assessed at one gold mohur.

Ghose, J.

7. I agree.