

(1887) 04 CAL CK 0010
In the Calcutta High Court

Mookoond Lal Pal Chowdhry and Another	APPELLANT
Vs	
Mahomed Sami Meah	RESPONDENT

Date of Decision : 15-04-1887

Acts Referred:

Civil Procedure Code, 1882 — Section 244

Citation : (1887) ILR (Cal) 484

Hon'ble Judges : W. Comer Petheram, C.J.; Ghose, J

Bench : Division Bench

Judgement

W. Comer Petheram, C.J.—The question which arises here is whether a Court, which has given a wrong decree, which has been afterwards reversed, for the possession of land, has power to order the restitution of the thing which had been improperly taken under its decree with the mesne profits which have been derived from that thing whilst it was in the possession of the party who was not entitled to it.

2. A decision of the Allahabad Court in which I took part has been cited, in which it was held that the section of the Code does not prevent the person who has been wrongfully deprived of his property by this proceeding from bringing an action to recover the profits during the time he has been wrongfully kept out of possession ; and speaking for myself I still adhere to the opinion which I then expressed that such an action maybe maintained ; but, if such an action can be maintained, it by no means follows that the Court which has given possession under the wrong decree, which has afterwards been cancelled, cannot order restitution of the property which has been wrongfully taken and any mesne profits which may have been derived from it in the meantime.

3. Speaking for myself, I do not think that this restitution is a proceeding which comes within the meaning of Section 244 of the Code of Civil Procedure, but I think it is an inherent right in the Court itself to prevent its proceedings being made any cause of injustice or oppression to any one, and therefore it seems to me that that inherent right does exist, and that the Court has a power under that

inherent right to order restitution of the thing which has been improperly taken, and as a part of that power it must have the right and the power to order restitution of everything which has been improperly taken. If they have that power, they have the power not only to order restitution of the property itself, but restitution of any proceed which have been improperly taken during the time that it was in the possession of the person who was not entitled to it. These proceeds which have been received are the mesne profits of the property; and, therefore, it seems to me, it being admitted that there is a power in the Courts to order restitution of the property, it must follow that they have the power to order restitution of the mesne profits, and therefore the order of the Court below, directing the restitution of the property and the return of the mesne profits, was perfectly correct. The Appeal must, therefore, be dismissed with costs.