

(1915) 10 MAD CK 0045
In the Madras High Court

Naina Pillai Maracayar

APPELLANT

Vs

Arumuga Mudaly

RESPONDENT

Date of Decision : 15-10-1915

Acts Referred:

Citation : AIR 1916 Mad 805 : 31 Ind. Cas. 387 : (1915) 2 LW 1129

Hon'ble Judges : Spencer, J;Abdur Rahim, J

Bench : Division Bench

Judgement

1. In this suit, a decree for possession and past mesne profits was passed on the 30th March 1904. There are a number of defendants in the suit 3 and the 15th defendant was in possession of the land to which the appeal relates. On the 1st August 1904, he gave notice to the plaintiff that he was willing to surrender possession of the land. The plaintiff said that it was too late for purposes of its cultivation, and that she would not then take possession. Thereupon the 15th defendant made an application to the Court and plaintiff took possession in October, but the land remained uncultivated. The question we are asked to deal with is whether, as a matter of fact, when the 15th defendant was willing to surrender possession or rather gave notice to the plaintiff, it was not too late for cultivation. The learned Subordinate Judge has come to the conclusion that it was rather late in the year for that purpose. We have heard full arguments on the point, but are not prepared to differ from that conclusion. It was possible that the plaintiff by making some special effort could have got something out of the land even after that date, but apparently she would not have been able to obtain full crops, and the order that has been passed by the Subordinate Judge in this respect is equitable in the circumstances of the case. This was the only point urged before us in the appeal, and that failing, the appeal is dismissed with costs.

2. There is only one point in the memorandum of objections that has been urged before us and that relates to interest on mesne profits. The Subordinate Judge has allowed mesne profits for three years and in calculating mesne profits he

has, as the law directs, taken into account the interest on the profits for those three years, but has refused, to allow interest for the period beyond three years. It is now contended before us that he is wrong and that he was bound to give interest up till the date of payment. The main decision on the point is that of the Privy Council reported as *Grish Chunder Lahiri v. Shoshi Shikhareswar Roy* 4 C.W.N. 631, but what we gather from the heading is (and there is nothing in the judgment inconsistent with it) that mesne profits include interest, but that it can be given only three years after the decree and not any further. But it appears that when the case was remitted to this country the learned Judges of the Calcutta High Court gave mesne profits up to the date of delivery of possession see *Girish Chandra Lahiri v. Sasi Sekharcswar Roy* 33 C.K 329, but the question, however, does not appear to have been raised before them, nor is it discussed in the judgment. There is also a decision of the Calcutta High Court reported as *Ijatulla Bhuyan v. Chandra Mohan Banerjee* 12 C.W.N. 285. That would rather support the view which has been taken by the learned Subordinate Judge in this case. What we find here that the decree provides for interest on past mesne profits, but does not provide for any interest on mesne profits after the date of the decree. It is quite clear from the very decisions cited before us that the Court has discretion in a matter like this whether to allow interest after three years or not.

3. We are unable to say that the discretion has been wrong by exercised in this case. The memorandum of objections also fails and is dismissed with costs.