

(1869) 06 CAL CK 0038
In the Calcutta High Court
Case No : Regular Appeal No. 23 of 1869

Pratab Chandra Binwa

APPELLANT

Vs

Rani Swarnamayi

RESPONDENT

Date of Decision : 02-06-1869

Acts Referred:

Citation : (1869) 06 CAL CK 0038

Judgement

Macpherson, J.—The first ground taken by Mr. Allan for the appellant in this case is that six years' limitation will not apply in the present instance; because, although this suit was instituted in 1866, the former suit, which terminated with a decree for possession in favor of the plaintiff, was instituted long before the passing of Act XIV of 1859. But it appears to us that the present suit, having been instituted after Act XIV of 1859 came into force, is subject to the provisions of that law, and that that law alone will apply; consequently we think that in no case can the plaintiff recover mesne profits for more than the six years preceding the institution of the suit. The second ground of appeal is that the Deputy Commissioner is wrong in holding that the plaintiff cannot bring a regular suit for mesne profits which fell due within the period from the institution of the suit for possession in 1851 to the execution of the decree in 1866.

2. The Deputy Commissioner relies upon a decision of the Madras High Court, Chennapa Nayadu v. Pitchi Reddi 1 M.H.C.R. 453. That case does not accord with decisions of this Court; and there is no doubt that, according to the principle laid down in the decision of the Full Bench, in case of Madhusudan Lal v. Bhikari Sing Case No. 249 of 1865, Sept. 15th, 1866 (B.L.R. Sup. 602), as also in various later decisions of this Court upon this point, a regular suit for mesne profits will lie after a suit for possession, if in that suit no question of mesne profits was raised or decided. The plaintiff is entitled to a decree for such mesne profits as may have accrued within six years prior to institution of suit.

3. The case must be remanded to the lower Court, in order that it may ascertain the amount of mesne profits. Any claim or statement made by the defendant as

regards the value or profits realised from the property will be admissible as evidence against him, though not conclusively. Each party will bear his own costs of this appeal.