

(1897) 02 CAL CK 0008
In the Calcutta High Court
Case No : Appeal from Order No. 40 of 1896

Raghu Nandan Jha and Others

APPELLANT

Vs

Jalpa Pattap

RESPONDENT

Date of Decision : 26-02-1897

Acts Referred:

Citation : (1897) 02 CAL CK 0008

Final Decision : Allowed

Judgement

1. The Appellants before us obtained a decree of ejectment against the Respondent on 12th August 1892 corresponding with 4th Bhadro 1299 F., but they did not obtain possession till Assar 1301 F. They accordingly brought this suit to recover damages, claiming Rs. 95-8 odd as the profits realized from the crops during 1299, 1300 and 1301 F. The first Court decreed the claim in full.

2. The Appellate Court has held that the Plaintiffs are not entitled to recover as damages the value of the produce taken and appropriated by the Defendants, but merely the rent at which they would have been able to let out the land to other tenants. The Subordinate Judge thinks, however, that they should not be confined in their claim to the jumma paid by the former tenants, as they would probably have been able to secure a higher rental from new tenants, besides nazarana. And as there was no evidence on the record to show what rental and nazarana the Plaintiffs could have obtained, he has remanded the suit for a fresh trial.

3. The Plaintiffs prefer this second appeal on two grounds, first, that the lower Appellate Court was not justified in remanding the case; and, secondly, that the principle upon which the first Court assessed the damages was the correct one. Upon both points the Appellants rely upon an unreported judgment Appeal from Order No. 126 of 1894, decided on the 26th of January 1895 unreported of a Divisional Bench of this Court the facts of which case were on all fours with the present. The lower Appellate Court in that case held that the Defendant was liable for the profits which he had made by cultivating the land and as the

evidence on the record was not sufficient to enable the Appellate Court to ascertain those profits, the suit was remanded for the trial of that question. This Court held that the principle laid down by the lower Appellate Court for the assessment of mesne profits was the correct one, but that the order of remand under sec. 562 of the Code was bad.

4. The proper principle upon which mesne profits should be assessed in cases like these was laid down by a Full Bench in the case of *Ranee Asmed Koer v. Maharanee Indurjeet Koer* 9 W.R. 445 (1868) : s.c. B.L.R. Sup. Vol. F.B. Rulling 1003. It was there decided that the proper principle was to ascertain what would have been a fair and reasonable rent for the land if the same had been let to a tenant during the period of the unlawful occupation of the wrong-doer. That principle has been approved by the Privy Council in the case of *Maharaja Luchmessur Singh v. Chairman of the Darbhanga Municipality* L.R. 17 IndAp 90, 97 (1890). We are bound to follow the Full Bench decision in preference to that of the Divisional Bench which is relied on by the Appellants. As regards the legality of the remand order, we are of opinion that the lower Appellate Court was not justified in remanding the suit for trial under sec. 562 of the Code. Its duty was to pro-coed under sec. 565 or under sec. 566 if the evidence upon the record was not sufficient to enable it finally to determine the case. We accordingly allow this appeal and set aside the order of the lower Appellate Court, which will now proceed to act in accordance with these remarks. But we do not consider that this is a case in which we ought to make any order as to costs.