

(1921) 05 PAT CK 0009
In the Patna High Court

Tilakdhari Singh and Others

APPELLANT

Vs

Ram Prasad Singh and Others

RESPONDENT

Date of Decision : 02-05-1921

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 144

Citation : 62 Ind. Cas. 25

Hon'ble Judges : Das, J;Adami, J

Bench : Division Bench

Judgement

Das, J.—Four questions have been argued before us: first, whether the defendants are liable in respect of the mesne profits for the years 1318 and 1321; secondly, whether a joint decree for mesne profits should have been pasted against them; thirdly, whether the Court was right in granting less than 33 per cent, as cost of cultivation; and lastly, whether the Court was right in granting interest at the rate of 12 per cent. per annum. So far as the last two questions are concerned, we do not intend to disturb the findings of the Court below. The Court was not bound to make an allowance in respect of the cost of cultivation at all; and I am not prepared to say that the Court erred in allowing less than 33 per cent. So far as the question of interest is concerned, that also is a matter largely in the discretion of the Court below, and I do not think that there was an error of law on the part of the Court in allowing interest at the rate of 12 per cent.

2. I now come to the first question that was argued as regards the mesne profits in respect of the year 1321. Mr. Manuk on behalf of the appellants shows from the nazir's report that there were some standing crops on some of the plots when possession was delivered to the decree-holder.

3. It appears that on the 7th of February 1914 there was an injunction issued by the Court restraining the judgment-debtors from cutting the standing crops. That injunction was dissolved on the 7th March 1914. It is quite clear, therefore, that between those two dates the judgment-debtors could not have cut and carried

away the crops standing on the fields.

4. Now possession was given to the decree-holder between the 7th of February 1914 and the 7th of March 1914. It is quite possible that the judgment debtors had time to remove some crops from some of the fields, but in my view the nazir's report should have been considered by the learned Subordinate Judge. To take one instance, the nazir in Execution Case No. 161 of 1913 reported that masuri and mustard crops were standing on the fields bearing batwara Nos. 574--588. It follows, of course, from this report that there were no standing crops on the other batwara numbers, but I think it follows from this report that there were lentil and mustard crops on plots bearing batwara Nos. 574--588. We have not gone through all the reports of the nazir, but Mr. Manuk on behalf of the appellants assures us that all the reports signed by the nazir show that there were some crops at any rate on some of the fields which were made over to the decree-holder.

5. The learned Subordinate Judge must, when the case goes back to him, discuss this matter and ascertain to what extent the judgment-debtors are liable in respect of the mesne profits for the year 1321. He must proceed on the nazir's report, which he must accept as correct.

6. The next point is, are the decree holders entitled to mesne profits in respect of the year 1318? The case of the judgment-debtors was that there was an order u/s 144, Criminal Procedure Code, prohibiting them from going upon the lands in dispute. It is quite true that that order was subsequently dissolved, but it is the defendants' case that they had no time to grow the crops and that they did not grow any crops and are not liable for any mesne profits in respect of the year 1318. The plaintiffs' case, on the other hand, is that they grew the crops but that the defendants carried them away. This point has not been dealt with by the learned Subordinate Judge at all; his finding is that as the disturbance was created by the defendants, they are bound to pay the mesne profits in respect of that year to the plaintiffs inasmuch as but for that disturbance, the plaintiffs would have had the crops which they had grown. In my view that is not correct. It is sufficient to refer to the definition of mesne profits in the Civil Procedure Code: "Mesne profits means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession." The true criterion is not the loss caused to the person wronged, but the gain made by the wrong-doer. The learned Vakil on behalf of the respondents, however, says that there is evidence in the record which would establish that the defendants actually carried away the crops grown by them in 1318.

7. We think that the learned Subordinate Judge must consider the evidence on this point. We set aside his decision on this point, and direct that he must consider the evidence and if he finds that the defendants did, as a matter of fact, cut and carry away the crops grown by the plaintiffs in 1318, then he would

be entitled to make the defendants liable for the mesne profits in respect of 1318, but not otherwise.

8. The last point is whether the learned Subordinate Judge was right in passing a joint decree against the defendants. It is admitted that the plaintiffs have exonerated some of the defendants. The whole question is, what is the effect of that exoneration. The case of Ram Ratan Kapali v. Aswini Kumar Dutt 6 Ind. Cas. 69 : 14 C.W.N. 849 : 11 C.L.J. 503 : 37 C. 559 is directly in point. It was held in that case that where the plaintiff by his own act splits up the claim against the defendants, he cannot get a joint decree against all the defendants. In that case the plaintiff released some of the joint tortfeasors and the learned Judges in the High Court refused to pass a joint decree against the others. We think, therefore, that the decree passed by the learned Subordinate Judge in this case cannot be supported. The decree ought to specify separately the extent of liability of each of the defendants.

9. We allow the appeal, set aside the order passed by the learned Subordinate Judge and remand the case to him to be dealt with on the lines indicated in this judgment. The defendants are entitled to their costs; one set of costs allowed in one appeal only.

10. The order will govern all the analogous appeals, but there will be no order as to costs in those appeals.

Adami, J.

11. I agree.