

**(1935) 01 PAT CK 0027**  
**In the Patna High Court**  
**Case No : Appeal No. 621 of 1932**

Wahid Ali

APPELLANT

Vs

Biptu Chamar and others

RESPONDENT

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**Date of Decision :** 16-01-1935

**Acts Referred:**

**Citation :** (1935) 01 PAT CK 0027

**Final Decision :** Dismissed

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## Judgement

Wort, J.—This is an appeal from the decision of the Subordinate Judge remanding a case for the Munsif to determine certain issues. The action was for Rs. 300 the balance of the consideration of a usufructuary mortgage, the consideration amounting in all to Rs. 1,200, it being stated by the plaintiffs that the defendant had paid all, but the Rs. 300 which the plaintiffs claimed in the action. From para. 6 of the plaint together with the reliefs claimed by the plaintiffs it would appear that an alternative claim had been put forward. First of all they should get a proportionate return of the land into possession of which they had placed the defendant, and that they should have mense profits for such, proportion. Then they claimed in the alternative, as I have said, the Rs. 300. Now, it is clear that they could not make the first claim because it was impossible to divide the mortgage up. But in one form or another I am satisfied that they arc entitled to the Rs. 300.

2. It is contended by the learned advocate appearing on behalf of the defendant-appellant that the manner in which the plaintiff had presented their plaint prevented his succeeding. That is a highly technical point and in this country impossible to support. The authority of the Calcutta High Court is quoted for the purpose of showing that there could be no action for specific performance if this action be confined to the claim for Rs. 300. It is admitted by the advocate that they are entitled to damages and it seems to me that the measure of damages which the plaintiffs have suffered is the difference between what they have got and what the defendant contracted to give them that may very well be Rs. 300.

In my judgment therefore although the plaintiffs cannot recover proportionate land or mesne profits they are entitled either to Rs. 300 or damages for the non-payment which might very well be the same sum.

3. The appeal in my opinion fails and must be dismissed with costs.