

Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Hurro Doorga Chowlhrani v. Maharani Surut Soodari Debi, from the High Court of Judicature, at Fort William, in Bengal; delivered November 8th, 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

THE Respondent in this case was the Plaintiff in the Court below. She sued the husband of the present Appellant to recover possession of certain lands together with the sum of Rupees 3,647, 10 annas and 9 pie, the estimated amount of mesne profits for 2 years 10 months and 20 days from the 1st Assin 1273 to 20th Srabun 1276. In that suit a decree was made for the Plaintiff to recover possession of the lands, and also the mesne profits, not from a time previous to the date of the suit, as claimed, but from the date of the suit to the date of recovery of possession, to be ascertained by inquiry at the time of the execution of the decree, with interest from the date of the ascertainment at six per cent. per annum. From that decree there was an appeal to the High Court. The High Court, by its decree, amended the decree of the Lower Court by giving the mesne profits from the 1st Assin 1273 to the 20th Srabun 1276, in addition to those which had been awarded by the Lower Court. The High Court also stated that the mesne profits were to be recovered, with

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interest from the date of ascertainment. Therefore, according to both decrees, the mesne profits were to carry interest only from the date of ascertainment. It is clear that the Court, in executing the decree, could not vary or add to it by awarding anything beyond that which was originally decreed. When the decree came to be executed it was referred to an Ameen to ascertain the amount of mesne profits, and he ascertained what was the rent which might have been obtained from the estate. That he treated as the mesne profits of the estate, but he added no interest year by year upon the amount. The mesne profits so ascertained amounted to Rupees 13,359 and some odd annas, and the Lower Court made an order in execution for that amount. Upon that there was an appeal to the High Court by both parties, first on the ground that the assessment was excessive; and secondly, on the part of the Plaintiff, that in assessing the mesne profits the Court below ought to have allowed interest year by year upon the amount which could have been collected, and further interest upon the aggregate amount from the date of its order. The High Court upon that appeal, having heard the argument of counsel, thought that the Lower Court was wrong in not having allowed interest upon the rental year by year, upon the ground that the decree holder was entitled, not merely to the rental less the collection charges, but also to interest thereon year by year as compensation for the loss he had sustained by not having the use of his money during the period he was kept out of possession. The question is, whether the High Court, which by its decree was merely executing the original decree of the High Court, did not by giving that interest really add to and alter the decree which was to be executed. Now that depends really upon the question what was the meaning of the term "mesne profits."

In their Lordships' opinion, the amount which might have been received from the land, deducting the collection charges, was the profits of the land. The loss of interest year by year upon those profits was merely damages sustained by the Plaintiff in consequence of her having been prevented from receiving the profits as they became due. But the original decree did not award those damages, and the High Court by awarding them added to the decree which was in the course of execution.

Several cases were cited to show that the High Court was right in giving interest year by year, and several of those cases were referred to by the High Court themselves in their judgment. Amongst others a case was cited from the 14th "Weekly Reporter," 151. When that case comes to be examined it will be found that it was not an appeal from a decree in execution, but from a decree in an original suit; and in that appeal it was contended that the Lower Court ought in the original suit to have given the Plaintiff a decree, not only for the mesne profits, but for interest upon those mesne profits to be calculated from year to year. The High Court in that case thought that, under certain circumstances, a Plaintiff might be entitled to interest upon mesne profits from year to year; but they said that, inasmuch as that interest had not been claimed in the suit, they could not interfere in the case, and the Plaintiff merely recovered the mesne profits without interest. That is a very different case from the present. There it was contended that the original decree of the Court ought to be altered; here it is contended, not that the original decree of the Court ought to be altered by awarding interest year by year, but that the decree of the High Court in the execution of the case, in awarding such

interest, was in accordance with the original decree. The case cited, however, is an authority to show that it was not so; for in that case the mesne profits and the interest thereon were treated as two distinct subjects, and the Court refused to allow the interest as well as the mesne profits, because the loss of the interest had not been claimed as damages.

If the present contention is correct, the term mesne profits in that case included interest thereon year by year, although the Court refused to allow it. It appears to their Lordships that the decision of the Lower Court in executing the decree was in accordance with the decree, and that the decision of the High Court by adding the interest from year to year exceeded the original decree.

Under these circumstances their Lordships think that the decree of the High Court ought to be reversed.

It appears that the total amount which the High Court has given by way of interest in excess of the decree is Rupees 5,744. If that had been the only objection the case would have been under the appealable value; but the Appellant, in order to gain a locus standi, appealed also upon the ground that the amount awarded for mesne profits was excessive; and the greater portion of the Record, about 240 pages, relates to that part of the case, upon which there was no chance of the Plaintiff's succeeding. The decisions of the Ameen, of the Lower Court, and of the High Court were concurrent with reference to that point. The only possible ground of appeal was that the Court had allowed interest from year to year.

Their Lordships cannot encourage the joinder of grounds of appeal which are absolutely untenable with grounds which are tenable in order to bring a case within the rule as to value

which authorises an appeal as of right. In the present case the effect of so doing has been a large increase of costs to the Respondent. The Appellant has thereby disentitled herself to the benefit of the rule under which a successful appellant is ordinarily entitled to the costs of the appeal.

Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the High Court, but they make no order as to costs.

