

**(1880) 01 AHC CK 0008**

**Allahabad High Court**

**Case No:** None

Ganga Prasad

APPELLANT

Vs

Gajadhar Prasad and Others

RESPONDENT

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**Date of Decision:** Jan. 29, 1880

**Citation:** (1880) ILR (All) 651

**Hon'ble Judges:** Robert Stuart, C.J; Spankie, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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### **Judgement**

@JUDGMENTTAG-ORDER

1. Appellant appears to have claimed a larger share of profits than he was entitled to, or at least to have asked for the same outturn from each field, which the Judge rightly regards as an unsatisfactory account of the profits. The defendants furnished no accounts. Mesne profits (Explanation, Section 211 of Act X of 1877) mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received therefrom. Applying this rule to the particular circumstances of the case in which both parties are shareholders in the estate, and defendants themselves occupied and cultivated the lands in suit, the most reasonable and fitting mode of assessing the amount to which the plaintiff is entitled would be to ascertain and determine what would be a fair rent for the land, if it had been let to an ordinary tenant and had not been cultivated by the respondents themselves. The rent recorded in the rent-roll is probably that paid by sir lands, and if so the plaintiff seems to be entitled to the rent which the respondents could have obtained from a tenant, if they had not kept the lands in their own hands. We remand the case to the Judge to enable him to ascertain and determine what the rent should be. On receipt of his finding one week might be allowed for objections, and at the end thereof the appeal as regards appellant will be disposed of.

2. With regard to the objections put in by the respondents, they cannot be admitted. These objections are in fact an appeal from the decree passed against respondents in this case, on the appeal brought by the mselves against the original decree of the first Court. u/s 561 of Act X of 1877 a respondent, though he may not have appealed against any part of the decree, may, upon the hearing, not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal. But in the case now before us the appellant lost his appeal, and there was no objection which respondents could have taken by way of appeal to this Court against the decree of the lower Appellate Court. They might have appealed from the decree on their own separate case of appeal, but in the particular case before us the decree of the lower Appellate Court was one dismissing the appeal of the present appellant. We may add that if the objections by way of appeal in their own case could be received, they would fail as they impugn the finding of the Court in that case on a matter of fact, and there are no legal grounds for a second appeal.