

(1967) 11 MP CK 0002
Madhya Pradesh High Court
Case No: S. A. No. 454/64

Ramchandra Gajraj

APPELLANT

Vs

Anantram Udairam

RESPONDENT

Date of Decision: Nov. 14, 1967

Acts Referred:

- Limitation Act, 1908 - Article 182

Citation: (1969) JLJ 916 : (1969) MPLJ 789

Hon'ble Judges: K. L. Pandey, J

Bench: Single Bench

Advocate: J. V. Jakatdar, for the Appellant; P C. Naik and A. P. Sen, for the Respondent

Final Decision: Dismissed

Judgement

K. L. Pandey, J.

This is a defendant's second appeal against a reversing decree of the lower appeal Court whereby the plaintiff's claim for mesne profits received by the defendant in the year 1956-57 from certain plots of land was decreed to the extent of Rs. 1,000.

The material facts are these. The defendant had filed a civil suit in the Court of Civil Judge, 1st Class, Raigarh, for possession of certain plots of land of village Arjuni in Sakti tahsil which have been detailed in Schedule I to the plaint. That suit was transferred to the file of the District Judge, Raigarh, and registered as Civil Suit No. 6A of 1950. In that suit, the defendant's claim for possession of those plots was decreed on 9 August 1950. Being aggrieved, the plaintiff filed First Appeal No. 123 of 1950. By a judgment delivered on 19 April 1957, this Court allowed the appeal and dismissed the suit. In the meantime, the trial Court's decree had been transferred for execution to the Civil Judge, 2nd Class, Janjgir and, in execution of that decree, possession of all those plots was delivered to the defendant on 20 May 1956. Consequent upon the decree being reversed on 19 April 1957, the plaintiff retook possession but, in the meanwhile, the defendant had remained in possession of the

plots without any title during the year 1956-57. The plaintiff filed the suit, out of which this appeal arises, for mesne profits taken from the plots by the defendant in the year 1956-57.

The Court of first instance dismissed the suit mainly on the ground that, in view of sub-section (2) of section 144, it is not competent to institute a suit for any restitution or other relief obtainable by application under subsection (1) of that section. The Court declined to follow *Jamanlal v. Ragba* A I R 1922 Nag 198 on the ground that, in AIR 1947 239 (Nagpur) , the view that an application for restitution is, in substance, an application for execution of a decree was overruled. The lower appeal Court, however, held that the Janjgir Court, to which the decree had been transferred for execution, was not a Court of competent jurisdiction, that the defendant must be regarded as having illegally obtained possession through the "void process of an incompetent Court" and that, therefore, section 144 (1) of the Code could not be invoked.

Having heard the counsel, I have formed the opinion that this appeal must be dismissed though for reasons different from those given by the Courts below. It may, or may not be, that the Janjgir Court was a Court of competent jurisdiction but it is manifest that the defendant was placed in possession of the plots in dispute pursuant to an order passed by that Court in execution of the decree which was subsequently reversed. In my opinion, the case falls squarely within the meaning of the words employed in section 144 (1) of the Code and it is none-the-less so even if the Janjgir Court, to which the Court passing the decree had transferred it for execution, had no pecuniary jurisdiction over the subject-matter of the decree.

As I indicated earlier, the Court of first instance declined to follow *Jamanlal v. Ragba* A I R 1922 Nag 198 because of a contrary view taken in AIR 1947 239 (Nagpur) . The last-mentioned case was, however, overruled by the Supreme Court in [Mahjibhai Mohanbhai Barot Vs. Patel Manibhai Gokalbhai and Others](#) , and it was held that an application for restitution u/s 144 of the Code was an application for execution of a decree and was, therefore, governed by Article 182 of the Limitation Act, 1908. It follows that, following AIR 1947 239 (Nagpur) , a similar view taken in *Laxmichand v. Sundrabai* 1952 NLJ 264 : A I R 1952 Nag. 275 : I L R 1952 Nag. 534 and *Shamrao v. Asaram* 1956 N L J 85 : A I R 1956 Nag. 129 : I L R 1956 Nag. 305 must now be regarded as no longer good law. If such an application is one for execution of a decree, it comes u/s 47 of the Code with the consequence that suit like the one here can be treated as proceedings under that section. This was precisely the view taken in circumstances similar to those present here in *Jamanlal v. Ragba* A I R 1922 Nag. 198 but it was regarded as superseded by *Khwaja Allawali v. Kesarimal* A I R 1922 Nag. 198. Since the Supreme Court has overruled this case, the authority of *Jamanlal v. V. Ragba* A I R 1922 Nag. 198 has been rehabilitated. That being so, the decree for Rs. 1,000 on account of mesne profits can be supported by treating the suit as an application u/s 144 (1) of the Code and the proceedings in the suit as

proceedings in execution on the basis of that application.

Since the parties had agreed that the mesne profits for the year 1956-57 should be regarded as Its. 1,000, there is on that score no contest here.

The result is that this appeal fails and is dismissed. Costs here shall follow that event. Other costs as ordered by the lower appeal Court. Hearing fee according to schedule.