(1870) 12 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 1512 of 1870

Pyari Lal Shaha		APPELLANT
	Vs	
Watson and Others		RESPONDENT

Date of Decision: Dec. 15, 1870

Final Decision: Dismissed

Judgement

Loch, J.
We have been pressed very much to remand the case, but after hearing the pleaders for the special appellant, we think that the decree is one come to on the evidence, with which we cannot interfere in special appeal. With regard to the question of damages, it is argued that the principle on which the Judge has directed the enquiry into the amount of damages to be made, is a wrong principle, and the principle laid down by the Full Bench in the case of Rani Asmed Koer v. Maharani Indurjit Koer Case No. 362 of 1867; 4th April 1868 should have been adopted in the present case.

2. But it must be borne in mind that in the judgment passed by the Full Bench, the parties were not in the same position as those in the present case. There the plaintiff was the zemindar who sued to recover the land from the wrong-doers who held and cultivated it themselves, and the Court held that in such cases the proper damages would be the amount of rents payable by the tenant for lands of that kind.

3. In the present case the plaintiff is a tenant himself, and it would not be a proper amount of damages if the Court awarded to him only the rents which the zemindar was entitled to receive, for, in that case, the tenant would get nothing, whereas he is entitled to get the profits which he would have made if he had held the land himself. This is the principle laid down in the case of Saudamini Debi v. Anand Chandra Haldar[1] and in other cases also.

4. What the Judge really says in respect of those words which have been objected to in his judgment is that parties should give the best proof in their power; if direct proof is wanting then the next best evidence as can be produced, should be submitted to the Court. We dismiss the appeal with costs.

Before Mr. Justice L.S. Jackson and Mr. Justice Markby.

The 10th January 1870.

Saudamini Debi (Judgment Debtor) v. Anand Chandra Haldar (Decree-Holder).

Miscellaneous Special Appeal No. 406 of 1869, from an order of the Additional Judge of Hooghly, dated the 21st August 1869, affirming the order of the Moonsiff of that district, dated the 19th January 1869.

Baboo Bama Charan Banerjee for the appellant.

Baboo Ambika Charan Banerjee for the respondent.

Jackson, J.--I think that the decision of the lower Courts in this case is quite right. The Moonsiff has cited, as an authority for the principle on which he assessed wasilat, a decision of a Full Bench of this Court which seems to be applicable to this case. The case of Rani Asmed Koer v. Maharani Indurjit Koer Case No. 362 of 1867; April 4th, 1868, cited by the Vakeel for the special appellant is one applicable to the case then before the Court, but not, as I think, to the case of wasilat in general. The land and the wasilat claimed in that case were of a somewhat special nature. The plaintiff in that case claimed to be allowed wasilat, taking as the basis of his claim the value of an exceptional crop, and the Court declined to give that. But that case seems to be quite distinguishable from the present. Then we are asked to interfere with the order of the Moonsiff on the ground that he has included as wasilat, 180 rupees, being the value of bamboo trees cut down by the defendant, while in occupation of the land, and 7 rupees, the value of a jack fruit tree also cut down.

The bamboo trees cut down were clearly part of the produce of the land, a large portion of which was covered by clumps of bamboo trees. As to the value of the jack fruit tree, it is not stated under what circumstances that tree was cut. It may be, and probably was, the case, that the tree being no longer fit for bearing fruit, the defendant had cut it down, and consumed the wood in burning or other purposes: and, if that was be, it would come within the description of wasilat, and there would be no error in making the defendant accountable. I think the appeal is perfectly groundless and vexatious, and the judgment of the lower Court must be affirmed with costs.

Markby, J.--I am of the same opinion. It appears to me that both the cases from the Pull Bench only speak of the collections made from the land, and that it was never intended to be laid down in those cases, as a proposition of law, that a man who was himself a cultivator, as was the plaintiff in this case, was not to recover the profits which he would have made out of the land by his own cultivation. The collections of the land may be a

very proper criterion where the plaintiff is not himself the cultivator; but where the plaintiff is cultivator or himself uses or wishes to use the land, the principle on which wasilat ought to be calculated, is, I think, what he himself would have made by himself holding possession of the land. As regards the other point, without going into the question whether or not mesne profits are strictly speaking damages, I think the plaintiff is entitled, when he recovers mesne profits, to treat as part of them, any produce of the land of whatever kind it may be that the wrongful possessor has appropriated to his own use in the course of his possession, which would include all the items which the lower Court has included in this case.