

(1866) 09 CAL CK 0004

Calcutta High Court

Case No: Miscellaneous Regular Appeal No. 249 of 1865

Mosoodun Lall

APPELLANT

Vs

Bekaree Singh and Others

RESPONDENT

Date of Decision: Sept. 15, 1866

Judgement

Sir Barnes Peacock, Kt., C.J.

We have no doubt that, in executing a decree, the Court which executes it has no power to alter or add to it. In many cases a decree may lawfully order amounts which are uncertain to be ascertained in execution. Ss. 196 and 197 of Act VIII of 1859 furnish examples of cases in which the enquiry as to the amount of interest or mesne profits decreed may be reserved for the Court executing the decree. If a decree awards a certain amount for principal with interest thereon at a certain rate from a certain day to the day of realization, it is not possible for the Court passing the decree to fix the sum payable for interest, as it cannot know on what date the amount will be realized. The period being fixed, or capable of being ascertained, for which interest is by the terms of the decree to be allowed, and the rate at which it is to be allowed being also fixed by the decree, it is a mere ministerial duty to ascertain the amount by calculation. The enquiry into the amount due for mesne profits is more of a judicial nature. But in both cases, by the express terms of the law, it may be left for the Court which executes the decree to ascertain what the amount is. But this is a very different thing from leaving it to the Court which executes the decree to discharge the judicial functions of the Court which passed the decree to the extent of awarding interest or mesne profits in cases in which the decree is silent in regard to interest or mesne profits; or of awarding interest or mesne profits at a higher rate, or for a longer period than is warranted by the decree, or of awarding interest or mesne profits in cases in which the Court passing the decree has actually disallowed them. It is said that the power of allowing interest or mesne profits is delegated by Act XXIII of 1861, s. 11, to the Court which executes the decree. That section enacts (reads):-- It appears to us that the only question which is left to be determined by the Court executing the decree is the question of amount. The words

"all questions regarding the amount of any mesne profits which by the terms of the decree may have been reserved for the adjustment in execution of the decree, or of" (that is to say regarding the amount of) "any mesne profits or interest which may be payable in respect of the subject-matter of the suit between the date of the suit and the execution of the decree, &c., shall be determined by order of the Court executing the decree." The latter branch of the section clearly refers to cases in which the payment of mesne profits or interest is provided for in the decree under s. 196 of Act VIII of 1859; the former branch to cases under s. 197. In both cases the mesne profits are payable within the meaning of s. 11, Act XXIII of 1861, the amount only remains to be ascertained according to the principles laid down in the decree. It clearly could not have been intended by words which convey a direction to determine all questions regarding the amount of mesne profits or interest payable in respect of the subject-matter of the suit between the date of the suit and the execution of the decree to authorize the Court executing the decree to determine, it may be, contrary to the terms of the decree, or in the absence of any decision upon the subject, whether interest or mesne profits due or were not payable at any rate for the period between the date of the suit and the date of the decree. Such a question is certainly one which would more properly be determined by the Court entrusted to pass the decree than by the Court authorised to execute it. But it may be said that the Legislature intended to give to the Court executing the decree power to determine not only the amount of, but the right to, interest or mesne profits between the date of the decree and the date of execution. But whatever is the power given to the Court with reference to the period between the date of decree and the date of realization, the same power is also given with reference to the period between the date of suit and the date of decree. Nay, further, the questions intended by s. 11, Act XXIII of 1861, whatever they are, which may be determined by the Court executing the decree, must be determined by that Court, The words of the section are "shall be determined." It could not have been intended to prevent the Court passing the decree from determining as to the legal right of the plaintiff to recover interest or mesne profits. But whatever questions must be determined by the Court executing the decree cannot be determined by the Court which passes it. This shows that the questions intended are questions of amount only. If the amount is fixed by the decree, no question remains as to it. The section clearly refers to questions of amount upon the subjects mentioned which are left open and not determined by the decree.

2. We are, therefore, of opinion that the question propounded by the Division Bench must be answered in the negative.

¹ Act XXIII of 1861, s. 11.-- "All questions regarding; the amount of any mesne profits which by the terms of the decree may have been reserved for adjustment in the execution of the decree, or of any mesne profits or interest which may be payable in respect of the subject-matter of a suit between the date of the suit and the

execution of the decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the decree or the like, and any other questions arising between the parties to the suit in which the decree has passed, and relating to the execution of the decree, shall be determined by order of the Court executing the decree and not by separate suit, and the order passed by the Court shall be open to appeal. Provided that if, upon perusal of the petition of appeal and of the order against which the" appeal is made, the Court shall see no reason to alter the order, it may reject the appeal, and it shall not be necessary in such case to issue a notice to the respondent before the order of rejection is passed."

(2) See *Iaromokini Chowdhraïn v. Dhanmoni Chowdhraïn*, 1 B.L.R., A.C., 142.