

(1880) 11 CAL CK 0003

Calcutta High Court

Case No: None

Baboojan Jha

APPELLANT

Vs

Byjnath Dutt Jha and
Others

RESPONDENT

Date of Decision: Nov. 27, 1880

Acts Referred:

- Court Fees Act, 1870 - Section 11

Citation: (1881) ILR (Cal) 472

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

In this case the appellant has been adjudged liable for about Rs. 1,200 as mesne profits due for three years on account of the respondents' share, three annas eight gundas one dumri, in Mouza Juggut, for which the respondents got a decree on 24th July 1878.

2. The only contention raised before us is, that the respondents are bound by the amount of mesne profits claimed by them in the plaint, viz., Rs. 309.

3. For the appellant two cases have been cited-Karoo Lal Thakoor v. Forbes 7 W.R. 140 and Gooroo Doss Roy v. Bungshee Dhursein 15 W. R. 61. In the former of these, it was laid down that "if the plaintiff had estimated his mesne profits in a general way with the view of determining the value of the suit, he would have been entitled to recover whatever sums had been realised or were capable of being realised by the defendant ; but when he comes into Court, and knowingly fixes the rate of each bigha of land, he is bound by his own assessment." Loch, J., who was one of the Judges in this case, seems to have decided a subsequent case, that of Hurro Gobind Bhukut v. Digumburee Debia 9 W. R. 217, in an opposite sense; but be joined in deciding the latter case, that of Gooroo Doss Boy v. Bungshee Dhur Sein 15 W.R. 61,

on the same principles as were laid down in *Karoo Lal Thakoor v. Forbes* 7 W. R. 140. The respondent meets the contention by reference to two decisions of this Court-*Lukheekant Doss v. Deendyal Dass* (14 W. R. 82). and *Pearee Soonduree Dossee v. Eshan Chunder Bose* (16 W. R. 302). In the former of these cases it was laid down, that "even with respect to the claim as stated in the plaint that would be subject to the result of further investigation;" and in the latter case, D. N. Mitter, J., laid down that where the decree did not limit the amount, and the plaint stated the amount approximately, the Court executing the decree could not go behind it.

4. Section 11 of the Court Fees Act was also cited in support of the respondent's contention.

5. In their plaint the respondents deliberately claimed Rs. 103 as the annual rent of the land from which he had been dispossessed. There was no approximate rate or amount mentioned.

6. We think that the general rule that a plaintiff cannot recover more than he claims in his plaint, ought not to be departed from except under special circumstances. The decision in the case of *Gooroo Doss Boy v. Bungshee Dhur Sein* (15 W. R. 61) lays this down, as we think, correctly. In this case the plaintiffs appear to have been aware that the lands of which they sought possession were in the occupation of tenants paying an ascertained rent of Rs. 103 for plaintiff's share; that being so, the plaintiffs demanded damages at that rate on account of the loss they had sustained from the wrongful possession of the defendant. It would have been better if the first Court had not reserved the ascertainment of the mesne profits for execution, and our decision is, that the plaintiffs can recover no more than Rs. 309 for the years 1280-82.

7. The appeal will, therefore, be decreed with costs, which we assess at two gold-mohurs.