

(1869) 06 CAL CK 0023

Calcutta High Court

Case No: Special Appeals Nos. 3279 to 3282 of 1868

Umes Chandra Roy and Others

APPELLANT

Vs

Shastidhar Mookerjee and
Others

RESPONDENT

Date of Decision: June 11, 1869

Judgement

Loch, J.

I think that we cannot interfere with the judgment of the Court below, though our decision is based on grounds different from those assigned by the lower appellate Court. The plaintiff in this case is the mortgagee, and after obtaining foreclosure he sued for possession, and in the month of Magh 1273, he was put into possession. He then brought a suit against the defendant in this case to recover the rents of 1273 and 1274.

2. The defendants, who are tenants on the property, admitted that there was a balance due for 1273 and 1274. But they pleaded that the plaintiff was not entitled to ask rents from them for a period prior to the date of his obtaining possession; and the Deputy Collector, considering this defence to be good, gave the plaintiff a decree for what was due from Magh 1273, and for the arrears of 1274; and on appeal, the Judge upheld the judgment of the Deputy Collector.

3. In the first Court the defendants pleaded payment of the rents of 1273, and produced dakhilas in proof of such payment.

4. The plaintiff, special appellant, now urges before us that the question ought to have been tried whether the defendants had or had not paid this money. He does not show us that he proved that these sums were due, but asks us to look at the defendant's case, and to see whether they have proved their case or not.

5. Now it appears to me that the party in possession, the wrong-doer, from whose hands the plaintiff obtained possession, is primarily liable for this money. It forms, in fact, a part of the mesne profits for which the party in possession is liable to the

plaintiff, the decree-holder; and mesne profits have been described, and are now known, to consist not only of what the party in possession has actually collected, but what he might have collected; and therefore it appears to me that the proper course for the plaintiff was to bring his action to recover mesne profits from the party in possession, but that he is not entitled to harass the ryots by bringing an action against them to recover rents which they might have paid to the party who was in possession. I would therefore dismiss these appeals with costs.

E. Jackson, J.

I quite concur. I think the plaintiff cannot obtain a decree for the rents prior to the date on which he obtained possession of the estate. Even if it was admitted that he was entitled to them, the plaintiff must prove that those rents are due before the defendants can be put upon their evidence to prove their allegations of payments. The plaintiff admittedly not knowing "whether the defendants have paid the rents, for 1273 or not, brings this suit for the whole of those rents, and his pleader urges before us, that, as the defendants have stated that they have paid the greater portion of them, the Courts must require them to prove that they have so paid, and if the defendants cannot prove this, the plaintiff ought to have a decree. It seems to me that it is for the plaintiff in the first place to make out a prima facie case that the rents in question are due. As he is unable to do this, his suit, as far as it refers to these rents, must be dismissed. He has obtained a decree for all rents which have fallen due since he obtained possession of the estate. The appeals will be dismissed with costs.