

(1977) 04 CAL CK 0013

Calcutta High Court

Case No: Appeal from Appellate Decree No. 5 of 1975

Shibdas Gopalji Patel

APPELLANT

Vs

Ram Chandra Mookerjee

RESPONDENT

Date of Decision: April 29, 1977**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 12, Order 20 Rule 12(1), Order 20 Rule 12(2)

Citation: (1977) 2 ILR (Cal) 142**Hon'ble Judges:** N.C. Mukherji, J; B.C. Ray, J**Bench:** Division Bench**Advocate:** Rabindranath Mitter, for the Appellant; Ranjit Kumar Banerjee, for the Respondent**Final Decision:** Allowed

Judgement

N.C. Mukherji, J.

This is an appeal against judgment and decree dated May 31, 1974, passed by Sri S.K. Chatterjee, Additional District Judge, Tenth Court, Alipore, in T.A. 134 of 1973 affirming those of Sri H. Banerjee, Munsif, Third Court, Alipore, passed in T.S. 209 of 1966 on May 31, 1972.

2. The Respondent filed a suit for recovery of possession, mandatory injunction and for damages against the Appellant on the ground that licence granted to the Defendant in respect of the suit land had been revoked.

3. The Defendant contested the suit claiming to be a tenant in respect of the suit land being a part of 44 S.R. Das Road and measuring about 7 cottahs. The suit was decreed and the decree was confirmed by the appellate Court. A second appeal was filed by the Defendant being S.A. 9 of 1970. this Court agreed with the concurrent findings of the Courts below that the Defendant was a licensee and his licence had been validly terminated. As regards damages for the unauthorised occupation of

the suit land this Court found that there was no sufficient material on record to decide whether the sum of Rs. 10 per diem as decreed by the Courts below was a reasonable amount of compensation or not. As such, this question was left open. His Lordship agreed with the Courts below that the Defendant was liable to pay damages, but the determination of the rate of damages payable by the Defendant was relegated to the proceeding under Order 20, Rule 12 of the Code of Civil Procedure. this Court directed:

The trial Court while deciding the amount of damages which the Plaintiff may be entitled to recover will also record finding as regards the rate of damages payable by the Defendant on the evidence already on record and on further evidence if adduced by the parties. I, accordingly, dismiss this appeal and affirm the judgment and decree of the lower appellate Court subject to the modification that the Plaintiff would get a decree for damages since 15th May, 1966, till he recovers possession of the suit land, but the rate of damages and the quantum of the same would be decided by the trial Court in the subsequent proceeding on payment of proper court-fees.

After remand the trial Court held that the Plaintiff was entitled to recover mesne profits at the rate of Rs. 10 per diem from May 15, 1966, till recovery of possession. It was also ordered that the Plaintiff would get mesne profits at the aforesaid rate from June 1, 1972, till the recovery of possession on payment of additional court-fees. The order was passed by the learned Munsif on May 31, 1972- The learned appellate Court affirmed the decision of the trial Court and the cross-objection filed by the Plaintiff with regard to costs was allowed. Being aggrieved, the Defendant has come up to this Court.

4. Mr. Rabindranath Mitter, learned Advocate appearing on behalf of the Appellant, in the first place, submits that the Court below overlooked the provisions of Order 20, Rule 12 and were wrong in allowing the Plaintiff mesne profits from the date of the institution of the suit till the recovery of possession. Order 20, Rule 12 of the Code reads as follows:

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree.

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Mr. Mitter draws our attention to Clause (c) of Order 20, Rule 12 which provides that the Court may pass a decree directing an inquiry as to rent or mesne profits from the institution of the suit until the delivery of possession or the relinquishment of possession by the judgment-debtor or the expiration of three years from the date of the decree whichever event first occurs,

and that being so, in a case where the Plaintiff has not yet recovered possession, he cannot get a decree for mesne profits beyond three years from the passing of the decree. Mr. Mitter, however, concedes that the decree passed by the trial Court was merged with the decree of this Court. this Court passed the decree on June 21, 1971. Therefore, the Plaintiff is entitled to get mesne profits from May 15, 1966, upto June 21, 1974 and not beyond that. The Courts below were wrong in passing a decree for mesne profits from June 1, 1972, till the recovery of possession. In support of the contention Mr. Mitter first refers to a decision in [Bhagwant Vinayak Vs. Radhakisan Gangabisan and Others](#), . In this case his Lordship had to consider the provisions of Order 20, Rule 12 and it was held that

when a decree is passed for payment of mesne profits until delivery of possession, there is always an implied term in the decree that mesne profits are not to be awarded for a period of more than three years in any case.

In coming to such conclusion his Lordship relied on *Girish Chunder Lahiri v. Shoshi Shikhareswar Roy* ILR Cal. 951 : L.R. 27 IndAp 110. In this case it was held by the Judicial Committee that

the expression "mesne profits" in a decree includes interest thereon but may not be allowed for any time later than three years from date of decree.

Mr. Mitter also relies on *Raja Bhub Indar Bahadur Singh v. Bijai Bahadur Singh* L.R. 27 Ind 209. In this case, a decree in ejectment dated November 12. 1887 declared the Plaintiff entitled to future mesne profits and was eventually affirmed by the Queen in Council on May 11, 1895. It was held

that mesne profits were recoverable upto May 11, 1895 and for a further period not exceeding three years until recovery of possession.

Mr. Mitter next refers to a Bench decision of the Allahabad High Court in [Kumar Jagdish Chandra Vs. Bulaqi Das and Another](#), . It was held by their Lordships that--

A decree for mesne profits till delivery of possession cannot be interpreted as a decree for the realisation of the mesne profits till the actual delivery of possession which may never take place. It cannot be contemplated that the decree-holders by failing to take action to obtain possession could create a right in themselves to recover mesne profits upto an imaginary date for the delivery of possession.

It was held

that the decree for mesne profits till recovery of possession should be construed as an award of mesne profits upto three years from the date of the decree in view of Rule 12(1)(c) of Order 20.

Mr. Mitter raised a point to the effect that an application under Order 20, Rule 12 cannot be entertained until the period for which the mesne profits have been awarded has expired. In this case mesne profits have been awarded till recovery of possession and until the decree-holder gets recovery of possession and enquiry cannot be made under Order 20, Rule 12. In support of his contention Mr. Mitter refers to a decision in *Karakhan Missir v. Jagdeo Missir* ILR Pat. 57. It has been held that--

Where a decree awards future mesne profits the right to apply for ascertainment of the amount of mesne profits does not accrue until the period for which the mesne profits have been awarded has expired.

Their Lordships of the Patna High Court in coming to the above conclusion relied on *Gangadhar Marwari v. Lachman Singh* 11 C.L.J. 541.

5. Mr. Ranjit Kumar Banerjee, learned Advocate appearing on behalf of the Respondent, contends in the first place that Chittatosh Mookerjee J. in S.A. 9 of 1970 has clearly directed that the Plaintiff would get a decree for damages since May 15 till he recovers possession of the suit land. In such circumstances, the Appellant cannot now agitate that the Plaintiff is not entitled to get mesne profits beyond three years from the date of the decree. Secondly it is contended that the Plaintiff is entitled to file more than one application and get more than one decree for mesne profits on payment of court-fees. In support of his contention he first refers to a decision in the case [Kanai Lal Maity Vs. Shyam Kishore Das and Others](#), . Their Lordships held that--

There is nothing in Order 20, Rule 12 of the Code or any principle of law to prevent a further application from being made and a fresh decree being passed to such relief in terms of the decree already obtained. Although Sub-rule (2) speaks of a final decree to be passed in accordance with the results of such enquiry it does not consequently follow that no other decree can be made previous to that final decree.

Mr. Banerjee also relies on a decision in Nallasivam Chettiar, minor by next friend Nallasivam Chettiar by Next Friend, Subbiah Chettiar Vs. Avudayamma by Father and Guardian, Ekambaram Chetti, . In this case, his Lordship lays down:

Between the preliminary decree and the final decree the lower Court can pass many interim final decrees. And when the lower Court adjudicates upon this matter it can be treated as an interim final decree.

None of the decisions referred to above have, however, laid down that the Plaintiff can get a decree for mesne profits beyond three years from the decree where he has not recovered the possession. Reference may be made to a decision in Fateh Chand Vs. Balkishan Das, (1413 Para 19). Their Lordships ordered that the Plaintiff would be entitled to mesne profits at a certain rate together with interest at the rate of 6% till the date of delivery of possession subject to the restriction prescribed by Order 20, Rule 12(1)(c) of the Code of Civil Procedure. The restriction is that the Plaintiff would not get) a decree where possession has not yet been delivered.

6. Thus, considering the provisions of Order 20, Rule 12 of the Code and the decisions referred to above we have no hesitation to hold that the Plaintiff is entitled to get decree for mesne profits from May 15, 1966, i.e. the date of the institution of the suit till June 21, 1974, i.e. three years from the date of the decree passed by this Court in S.A. 9 of 1970.

7. Mr. Mitter next contends that this Court found that there was no determination by the Courts below as regards the quantum of compensation payable by the Defendant for occupying the suit land after the licence was revoked and that there was no sufficient material to decide whether the sum of Rs. 10 per diem was a reasonable amount of compensation or not. The question was left open and the trial Court was directed to determine the rate of damages on the evidence already on record and on further evidence. Mr. Mitter submits that in ascertaining the rate of damages the learned Courts below ought to have considered the fact that for the back portion of the disputed land, the area of which is almost the same as that of the disputed land, the Defendant is a tenant at a rent of Rs. 72 per month. This ought to have been the basis for determination of the rate of damages as, according to Mr. Mitter, this is the best evidence available. Both the Courts below have taken into consideration the fact that the rent of the back portion Rule of the land is Rs. 72 per month. The Courts below have considered all other relevant facts and circumstances and have concurrently come to the conclusion that the rate of damages should be Rs. 10 per diem.

8. We are not inclined to interfere with the said determination. Mr. Mitter also submits that the learned appellate Court below was wrong in allowing the cross-objection and granting the Plaintiff the decree for costs. We do not think that the learned appellate Court below has done any wrong in allowing the cross-objection.

9. In the result, the appeal is allowed in part on contest. The judgment and decree passed by the Courts below allowing the Plaintiff to recover mesne profits till recovery of possession are set aside and it is decreed that the Plaintiff will get mesne profits from May 15, 1966, till June 21, 1974. The other portion of the decree is hereby affirmed. In the circumstances of the case there will be no order as to costs.

B.C. Ray, J.

10. I agree.

N.C. Mukherji and B.C. Ray, JJ.

11. Stay order passed in the connected Rule [C.R. 3856(s) of 1974] is vacated. The Respondent will be allowed to withdraw the amounts deposited in the executing Court in Title Execution Case No. 65 of 1974 towards the pro tanto satisfaction of the dues. Let the records go down as early as possible.