

(1879) 12 CAL CK 0011

Calcutta High Court

Case No: None

Ram Manickya Dey

APPELLANT

Vs

Juggunnath Gope and
Others

RESPONDENT

Date of Decision: Dec. 10, 1879

Citation: (1880) ILR (Cal) 563

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

In our opinion the lower Appellate Court has put a wrong interpretation upon the decree of the 6th July, 1871, and has thereby extended the period for which the judgment-creditor is entitled to mesne profits.

2. The decree is silent as to the date up to which mesne profits are to run. It merely says that mesne profits are to be ascertained and realized on a specified quantity of land at the time of execution of the decree. The Judge on this point observes: "The appellant, as judgment-debtor, is quite mistaken in supposing that in the decree there are any words of limitation which would exclude the decree-holder from the items under objection. Taking the decretal order as a whole, and reading it in connection with the subsequent proceedings, I cannot help thinking that the present interpretation now set up is an after-thought."

3. Then the Judge admits that there are no terms in the decree which limit or define the period for which the judgment-debtor is liable for mesne profits. He, therefore, thinks that the Court in execution is at liberty to interpret the decree as giving a latitude in the matter of mesne profits, which cannot be gathered from its express terms. But by so doing, he appears to us to have overlooked what the Privy Council in the Madras case of Sadasiva Pillai v. Ramalinga Pillai (L.R., 2 IndAp, 219), has declared to be settled law on the subject, namely, "that where the decree is silent touching interest or mesne profits subsequent to the institution of the suit, the

Court executing the decree cannot assess or give execution for such interest or mesne profits."

4. And secondly, "that the plaintiff is still at liberty to assert his right to such mesne profits in a separate suit." Nor can any argument in favour of extension of time be derived from those words of the decree which declare that the Court at the time of execution is to ascertain the mesne profits. On this point the judgment of Sir B. Peacock, in the case of *Wise v. Rajendro Coomar Boy* (11 W.R., 200), seems to us to be clear, and it is in accordance with the previous Pull Bench Ruling of this Court in the case of *Mosoodum Lall v. Bheekaree Singh* (B.L.R., Sup. Vol., 602; S.C. 6. W.R. 109). Sir B. Peacock says: "To order mesne profits to be assessed in execution without specifying the period for which those mesne profits are to be assessed, would be to depute to the Court of execution power to try the case, and in many cases the most essential part of it. If this were otherwise, in a suit merely for mesne profits a general order might be passed that they are to be assessed in execution."

5. In this view of the law, we are of opinion that, inasmuch as the decree of 1871 is silent on the point, and as it merely gives a decree for possession with mesne profits, those mesne profits can only be reckoned for the purposes of assessment in execution up to the date of the institution of the suit; consequently, the judgment-debtor is entitled to a refund of the monies which are comprised in the items 3, 4, 5, 6, 7, and 8 in the judgment of the lower Court.