

(1881) 01 CAL CK 0020

Calcutta High Court

Case No: None

Tarakchandra
Bhattacharjia

APPELLANT

Vs

Baikantnath Sannial
and Another

RESPONDENT

Date of Decision: Jan. 26, 1881

Citation: (1881) ILR (Cal) 119

Hon'ble Judges: R. P. Collier, J; R. Couch, J; M. Smith, J; B. Peacock, J

Bench: Full Bench

Judgement

B. Peacock, J.

Their Lordships are of opinion that the decision of the High Court was correct as to the construction of the order of the 14th September 1865. That order runs as follows:

2. At the hearing of this case this day by consent of both parties it (torn) arranged that the plaintiff (torn), have simple interest only (torn), original decree from the year (torn), date of payment, it being (torn) that the cross-decrees of (torn), for wasilat also bears simple interest from date of ascertainment only. The orders, therefore, for calculating interest on the one hand upon the sum ascertained to be due in 1250, and for setting off the wasilat due to defendants year by year is modified, and there will be no annual account to set the two accounts against one another. The simple interest only will be [120] calculated from 1828, when the other decree can be set off against the gross amount once for all. Decree as above, with costs in proportion.

3. From this judgment, and from the decree which was drawn up upon it, it appears to their Lordships that the intention of the Court was, as the Court have themselves subsequently expressed in the judgment now under appeal, that the interest should be calculated on the Sannials' decree from 1828 down to the time of that order, and that interest on the mesne profits, which had been assessed as due to the

Bhuttacharjias, should be calculated at the same rate of 12 per cent, from the date when those mesne profits were ascertained, down to the time of that order of the 14th September 1865. In point of fact the interest was calculated up to the 31st of December in that year, but in that respect the Bhuttacharjias, who were the appellants, have gained a benefit and the other side have not objected. Their Lordships, therefore, think that the judgment of the High Court, so far as it relates to the calculation of interest, is quite correct.

4. The decree of the Bhuttacharjias has not been set out on this record, but it appears that that decree included other matters than the mesne profits which were alluded to in the order. On the taking of the accounts before the Judge of the lower Court, the Sannials admitted a set-off to the amount of Rs. 3,00, 104-0-1. That amount included the sum of Rs. 16,324-10-15, in addition to the Rs. 2,11,914-11-11, the amount of mesne profits as appears in the Appendix A-I referred to in the judgment of the Judge of the lower Court. But in the account taken by the officer of the High Court, and in the decree of the High Court itself which was drawn up upon that account, no allusion whatever is made to the sum of Rs. 16,324-10-15. No explanation could be given at the Bar of this omission. Their Lordships, therefore, think that the cause should be remanded to the High Court to consider and determine whether or not that sum or any part thereof should be deducted from the sum (sic) the respondents.

5. In adjusting the accounts between the parties, the High Court (sic) calculated interest on the Rs. 291-7 allowed for the Amin's fees from 28th September 1828, whereas interest on that [121] account should have been calculated only from the 25th June 1844. It is a very small matter, but their Lordships think that the decree ought to be amended in that respect by deducting from the amount decreed to the respondents the excess of interest so allowed.

6. Their Lordships will, therefore, humbly advise Her Majesty that the decree be varied to that extent, and that the case be remanded to the High Court for the purpose of considering and determining whether the sum of Rs. 16,324-10-15, or any part thereof, should or should not be deducted from the sum decreed to the respondents, and that in all other respects the decree ought to be affirmed.

7. Upon the whole their Lordships think that the appellants ought to pay the costs of this appeal.