

Partab Singh Vs. Beni Ram

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1880)ILR2All61

Judge : Turner, Officiating C.J., ;Pearson and ;Oldfield, JJ.

Appellant : Partab Singh

Respondent : Beni Ram

Judgement :

Turner, Officiating C.J.

1. We are asked whether moneys realised as due under a decree can be recovered if unduly realised by application to the Court in the execution of decree. The language of the Codes, both the repealed and the existing Code, appears to us express on this point. The question whether moneys have been duly or unduly levied under a decree is clearly a question relating to the execution of the decree, and, if it arises between the parties to the suit or their representatives, the Code expressly declares it shall be determined by order of the Court executing the decree and not by separate suit. It has frequently happened that orders for the restitution of moneys unduly levied under a decree have come before this Court in appeal, and with the exception of one instance in no case has it been held that such orders could not properly be passed. We refer to the numerous cases heard by this Court on appeal from the Judge of Bareilly known as Husaini Begam's

case. In these cases the decree-holder, by executing the decree of an Original Court instead of the modified decree of the Appellate Court, had recovered sums largely in excess of the sums she was entitled to recover and was compelled to make restitution by orders passed in the execution of the decree. In *The Agra Savings Bank v. Sri Ram Mitter* I.L.R. 1 All. 388 the learned Chief Justice advanced in support of the opinion pronounced by him two cases decided by the Calcutta High Court. In *Haramohini Chowdhrain v. Dhanmani Chowdhrain* 1 B.L.R. A.C. 138 no more was decided than this: that mesne profits which were neither decreed nor claimed in a suit for possession after the date of the institution of the suit could be claimed in a separate suit. In *Ekowri Singh v. Bijaynath Chattapadhyaya* 4 B.L.R. A.C. 111 it was held that mesne profits which were not awarded by the decree could not be obtained by an order of the Court executing the decree. It appears to us that these cases, of which the authority is not impugned in this Court, and indeed there are decisions of this Court in accordance with them, do not bear on the question before us. In the cases cited there was no question whether the amount claimed was or was not decreed, for the decrees had admittedly awarded no mesne profits for the period for which they were claimed by separate suit.

2. In the case before us the applicant complains that he has been compelled to pay what he was not bound to pay under the decree. We are of opinion that he adopted not only the proper course, but the only course open to him, in presenting his application to the Court executing the decree.