

Rai Krishnapal Singh and ors. Vs. Dr. D.L. Ranjit Singh and ors.

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SooperKanoon Citation : sooperkanoon.com/477994

Court : Allahabad

Decided On : Mar-07-1919

Reported in : AIR1919All198; 50Ind.Cas.895

Judge : Henry Richards, C.J. and ;P.C. Banerji, J.

Appellant : Rai Krishnapal Singh and ors.

Respondent : Dr. D.L. Ranjit Singh and ors.

Judgement :

1. This appeal arises out of execution proceedings. The main question relates to mesne profits. In a suit for ejectment from a house the learned Subordinate Judge made the following decree: 'It is ordered that the plaintiff do get from the defendants Rs. 65, the rent for October 1905, and the moveables specified below, otherwise Rs. 250, the value thereof, as well as mesne profits pendentelite and future up to the date of possession at Rs. 65 a month together with future interest at the rate of 8 annas per cent, per mensem.' This decree was set aside by this Court and the suit dismissed. On appeal to His Majesty in Council the decree of this Court was set aside and the decree of the Trial Court restored with costs. The decree-holders are now seeking to execute the decree. The respondent Dr. Ranjit Singh claimed to deduct from the mesne profits of Rs. 65 a month certain payments which he alleges he had made in respect of repairs, taxes, ground rent and other matters and interest thereon. His contention found favour with the Court below and the sum of Rs. 9,557-1-7 was allowed to be deducted against the Rs.

65 per mensem. We think that the decision of the Court below was not correct. The Court had to execute as it stood the decree which had become the final decree in the suit, namely, the decree of the Subordinate Judge. The decree could not be varied in any way. It may well be that the whole or a considerable portion of the deductions allowed by the Court below might have been allowed if the Court was fixing what mesne profits should be allowed to the plaintiff. But the decree of the learned Subordinate Judge fixed the mesne profits at Rs. 65 per mensem and that decree has become final. Certain authorities have been cited to us including: the case of Kachar Ala Chela v. Sha Oghadbhai Thakarshi 17 B. 35 : 9 Ind. Dec. (N.S.) 23. A little consideration will show that all that these cases decided was that allowances for certain payments can be made in favour of the person in possession when the Court is ascertaining what mesne profits it should award in a suit for possession of immoveable property. Mesne profits are defined by Section 2, Clause (12) of the Code of Civil Procedure, and there can be no doubt that the Court is entitled to take certain matters into consideration when ascertaining what the mesne profits are to be. But in the present case this had already been done or must be assumed to have been done, when the learned Subordinate Judge awarded mesne profits at the rate of Rs. 65 per mensam. It appears also that the Court below in calculating costs allowed in the Court of first instance omitted to include interest in those costs, although awarded in the original decree. It stems also that the Court below itself intended to give interest on these costs because it is so stated in the judgment. The interest amounts to Rs. 836-8-6. The decree-holders are entitled to this sum also. With regard to interest on the costs in this Court and in the Privy Council no mention of interest is made in the decision of their Lordships of the Privy Council, and we see no reason to interfere with the view-taken by the Court below with regard to this item. The claim for interest on the other amounts was disallowed by the Court below, and we see no reason to interfere. The result is that we modify the order of the Court below by allowing the two sums, namely, Rs. 9,957-1-7 and Rs. 836 8-6 in addition to the amount allowed by that Court. To this extent we allow the appeal. Costs here and in the Court below will be in proportion to failure and success. Costs in this Court will include fees on the higher scale.

