

**Dalgleish Vs. Damodar Narain Chowdhry**

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**SooperKanoon Citation :** [sooperkanoon.com/862295](http://sooperkanoon.com/862295)

**Court :** Kolkata

**Decided On :** Aug-14-1906

**Reported in :** (1906)ILR33Cal1286

**Judge :** Francis W. Maclean, K.C.I.E., C.J. and ;Holmwood, J.

**Appellant :** Dalgleish

**Respondent :** Damodar Narain Chowdhry

**Judgement :**

Francis W. Maclean, K.C.I.E., C.J.

1. This is an application for a certificate that -the case is a fit one for appeal to His Majesty in Council. The only question is whether the amount or value of the matter in dispute amounts to Rs. 10,000.

2. The action was one for ejectment on the termination of certain leases and was brought very shortly after the termination of those leases. The property was valued at Rs 5,460, but in addition the plaintiff claimed mesne profits. Mesne profits, as we all know, are usually ascertained in execution proceedings in this country and in the proceedings in execution the plaintiff, who obtained a decree in the Court of the first instance, put in a claim for mesne profits for over Rs. 30,000. Nothing, however, was done as regards this claim as there was an appeal and the proceedings were stayed pending the appeal, which was ultimately successful.

3. The plaintiffs, the present petitioners, have filed an affidavit, in which they have sworn (hat the mesne profits amount to a sum far exceeding Rs. 10,000, and they have shown in detail how that amount is arrived at. The only way in which the other side meet those figures is by saying that the claim is 'preposterous.' They have, however, been in possession, and they have not shown how the claim is preposterous. In my opinion the plaintiffs are entitled to take into account their claim for mesne profits with a view to ascertaining whether the value of the matter in dispute reaches the statutory amount of Rs. 10,000.

4. I am fortified in this view by the decision of the Judicial Committee of the Privy Council in the case of Mohideen Hadjar v. Pitchey (1803) A.C. 103. There mesne profits for the period after the decree were allowed to be taken into account.

5. Anyway I think the decree involves, directly or indirectly, some claim or question to or respecting property of the value of Rs. 10,000 or upwards, within the meaning of Section 596 of the Code.

6. In either view it seems to me that the certificate must be granted.

**Holmwood, J.**

7. I agree.