

JamiruddIn Mollah Vs. Aswini Kumar Dutt

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Court : Kolkata

Decided On : Jan-18-1912

Reported in : 14Ind.Cas.34

Judge : Lawrence Jenkins, C.J. and ;N. Chatterjea, J.

Appellant : JamiruddIn Mollah

Respondent : Aswini Kumar Dutt

Judgement :

Lawrence Jenkins, C.J.

1. The two points urged before us are these, first, that the Court in assessing mesne profits should have made an apportionment such as was made in Ram Ratan Kapali v. Aswini Kumar Dutt 37 C. 559 : 6 Ind. Cas. 69 : 11 C.L.J. 503 : 14 C.W.N. 849. We are unable to apply the principle of that case because here no tenures have been proved, and the decree, by which the Court in execution is bound, is one which treats the defendants as trespassers pure and simple. Then it is urged that this order in execution could not be made by the Munsif, as the amount of mesne profits took the case out of his jurisdiction. It is not suggested that the Munsif had no jurisdiction, if regard be had to the value of the suit at the time of its institution: that is to say, if regard be had to the value of the property in suit and of the mesne profits that had then accrued due, but it is said that subsequent mesne profits have so swelled the value of the suit that the Munsif had

no jurisdiction. Our attention has been called to certain cases which give some colour of support to the contention that by reason of subsequent events a case may pass beyond the jurisdiction of the Court in which it was properly instituted. Those cases are not direct authorities on the point now before us; and it is enough for us to say that the objection is taken at too late a stage, inasmuch as it is urged before us for the first time in this appeal from appellate order.

2. The result is that we must dismiss the appeal with costs; hearing-fee 2 gold mohurs.

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