Privy Council Appeal No. 10 *of* 1935
Patna Appeals Nos. 21 *&* 22 *of* 1932

Babu Kedarnath Goenka - - - - - *Appellant*

v.

Maharaj Kumar Babu Bageshwari Prasad Singh and others - *Respondents*

Same - - - - - - - - *Appellant*

v.

Same - - - - - - - - *Respondents*

Consolidated Appeals

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH MARCH, 1937.

Present at the Hearing :

LORD THANKERTON.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* SIR SHADI LAL.]

These consolidated appeals arise out of proceedings in the execution of a decree obtained against the appellant by the respondents for the possession of land and for the mesne profits thereof. The questions raised by the appeals relate to the assessment of the mesne profits, and to the rate of interest which should be allowed on the profits.

The circumstances, which led to the decree sought to be executed, may be shortly stated. In the Monghyr district of the Province of Bihar there was an estate called Mahal Bisthazari. The mahal comprised about 360 villages, but was entered in the Collector's register as a separate revenue-paying estate. There were numerous proprietors in the mahal owning specific shares, some in one village only, others in several villages. Ordinarily, all the proprietors in a revenue-paying estate are jointly liable for the payment of the land revenue assessed on that estate, and, in the event of a default in payment, the whole of the estate may be sold for the realisation of such amount as may be due to government. But the Bengal Land Revenue Sales Act (Bengal Act XI of 1859), which prescribes rules for the

realisation of land revenue, provides that " a recorded sharer of a joint estate held in common tenancy " (section 10), or " a recorded sharer of a joint estate whose share consists of a specific portion of the land of the estate " (section 11) may, if he desires to pay his share of the revenue separately, ask the Collector to open a separate account with him for the payment of his share of the revenue separately from the other proprietors. The advantage of opening a separate account is that, when a default in the payment of land revenue takes place, the Collector " in the first place shall put up to sale only that share or those shares of the estate from which, according to the separate accounts, an arrear of revenue may be due " (section 13); and the rest of the estate shall not be liable to sale unless " the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale," (section 14).

A large number of the proprietors, who owned specific but undivided shares in Mahal Bisthazari, availed themselves of these provisions of the statute, with the result that the Collector opened separate accounts with them in respect of their liabilities for the payment of their shares of the land revenue. A large area of the estate, however, remained *ijmali* or joint share, and the owners of this *ijmali* share were still jointly liable for the payment of the land revenue in respect of it.

In 1901 there was an arrear of land revenue payable in respect of the *ijmali* share, and the Collector, in exercise of the power conferred upon him by the statute, sold the share, on the 9th September, 1901, by auction. The appellant's father Buijnath Goenka was certified to be the purchaser of that share, and obtained possession thereof on the 15th May, 1902.

Thereupon, the respondents with some of their co-sharers in the *ijmali* share, after an unsuccessful appeal to the Commissioner of the division, brought an action in the Court of the Subordinate Judge of Monghyr for the annulment of the sale, and for the possession of the property. The Trial Judge allowed their claim and granted them a decree for possession of the land with mesne profits. This decree, though reversed on appeal by the High Court, was restored by His Majesty in Council in 1915, with certain modifications which are not material to the present appeals.

It is the decree of the Subordinate Judge, which, as modified by the Privy Council, the respondents are seeking to execute. But before dealing with the execution of that decree, their Lordships consider it necessary to refer to the proceedings for the partition of the mahal which were commenced in 1876 but were not concluded until the 31st March, 1908. It is common ground that before the partition the respondents had shares in certain *ijmali* villages, and were also co-sharers in other villages in respect of which they had separate accounts. In lieu of their entire holding in the mahal they were awarded on partition three villages, namely Singthu, Padmawat and Dhandh, and these villages

were given a separate tauzi number. The interest of the respondents in the ijmali villages, which were sold in September, 1901, and purchased by Goenka, was represented by 6 annas, 9 gandas, and 14 cowries in each of these three villages; and the remaining share in the villages represented their interest in the mahal in respect of which they had separate accounts.

It appears that, while Goenka was entitled to the fractional share specified above in each of the three villages, he took possession of the whole of the village Singthu, but did not get possession of any portion of the other two villages. There can be no doubt that the respondents obtained possession of these latter villages, and they have remained in actual possession thereof to the exclusion of the appellant. But, on the 13th January, 1915, an order was made in the Land Registration Department that Goenka should be entered in the Collector's register D as owner in respect of 6 annas, 9 gandas and 14 cowries in Singthu as well as in the other two villages, and that the respondents should be registered in respect of the remaining share in each of the three villages.

After the decision of their appeal by His Majesty in Council, to which reference has already been made, the respondents applied for the execution of the decree for the recovery of the land, and also for the mesne profits thereof. They obtained possession of the land on the 7th May, 1918, and the dispute is now confined to two issues:—

(1) Whether the respondents are entitled to recover, from the appellant, mesne profits for the whole of the village of Singthu, or for only 6 annas odd share of it, during the period which will be presently described.

(2) Whether interest at the rate of 12 per cent. per annum, which has been awarded to them on the mesne profits, is excessive and should be reduced.

The period referred to in the first issue commenced on the 31st March, 1908, when the partition of the mahal was completed, and ended on the 13th January, 1915, when entries were made in register D recording the appellant to be the proprietor of 6 annas odd share in the village of Singthu, and the respondents as owners of the remaining share in that village. It is argued for the appellant that, as the interest purchased by him in 1901 was, on partition, represented by 6 annas odd share in Singthu, as in the other two villages, he was liable for mesne profits in respect of only that share in Singthu, but not in respect of the whole of the village in question. There is, however, no doubt that on the completion of the partition he came into actual possession of the entire 16 annas of that village, and the respondents' possession was confined to the other two villages. This division of possession, which was convenient to both parties, might have been the result of an arrangement arrived at between them, as explained by the respondents; but the fact remains that the appellant realised the profits of the whole of the village Singthu, and not of

the fractional share thereof. It is, however, urged that in his capacity as purchaser he was entitled to get possession and profits of only the fractional share, and that, if he realised more than his legitimate share, he did so as a trespasser. In that case he might be held liable for the excess profits in an appropriate action brought for the purpose, but the respondents cannot recover from him those profits in the execution proceedings. It appears that, while he was entered as a co-sharer in the villages on the completion of the partition in March, 1908, the *quantum* of his share in them was not recorded until the 13th January, 1915, when the relevant entries were made in register D. During the intervening period his possession of the village of Singthu was referable only to his title as purchaser at the revenue sale, and he received profits on that basis only. He was admittedly a co-sharer in that village, and there is no warrant for the suggestion that, while he was in possession of an undefined share as purchaser, he should be deemed to be in possession of the remaining share as trespasser.

It is to be observed that the appellant has not been made liable for any share of the profits of the other two villages, though he was a co-sharer in them on the strength of his purchase, the reason being that he was neither in possession of any share therein nor realised any profits from them. So far as his liability for the entire profits of the village of Singthu is concerned, he cannot invoke any principle which would support his contention. Their Lordships, therefore, concur with the High Court that his liability for the mesne profits of the whole of the village Singthu, which accrued during the period mentioned above, has been established.

The only other point, which requires determination, is what should be the rate of interest to be allowed on mesne profits. That interest should be awarded to the respondents is a matter which does not admit of any dispute. Indeed, the Indian law makes interest on mesne profits an integral part of mesne profits. It is enacted by section 2, subsection (12) of the Code of Civil Procedure, 1908, that the expression "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom together with interest on such profits.

Now, the rate, at which interest should be allowed, is not mentioned in the statute, nor is there any stipulation in any contract bearing on the subject. The rate is, therefore, in the discretion of the Court, but the discretion must proceed on sound principles.

The learned Judges of the High Court think that 12 per cent. per annum is the ordinary rate of interest, which should be awarded on mesne profits. They, however, hold that "this rate should be calculated only up to the delivery of possession, and thereafter the usual Court rate of 6 per cent. per annum should be allowed." But no reason has been

assigned for making the distinction between the rate of interest payable on mesne profits up to the date of the delivery of possession, and that to be awarded thereafter on the amount which represents profits found to be due on that date. In either case a sum of money is due to the decree holder, and he is entitled to recover it with interest for the period during which it has been withheld from him. In the absence of a statutory provision or a special contract, there is no valid ground for awarding interest at a higher rate up to a certain date during that period, and at a lower rate after that date.

The cases decided by the Courts in India do not disclose any uniform rule as to the rate of interest which should be granted on mesne profits. The rate must depend upon a variety of circumstances, but, as decided by this Board in the case of *Secretary of State for India in Council* v. *Saroj Kumar Acharjya Choudhury*, 62 I.A. 53, six per centum per annum is, in the absence of special circumstances, a fair rate of interest. The rate awarded by the High Court in that case was 12 per cent. per annum, but it was reduced by the Board to 6 per cent. per annum.

There are no special circumstances in the present case which would justify the award of a higher rate of interest; and their Lordships are, therefore, of opinion that 6 per cent. per annum is a reasonable rate of interest which should be allowed for the whole of the period during which the decree holders were deprived of the use of the money which was due to them. Interest at that rate should be calculated on the items on both sides of the account, that is to say, on the amount of the profits due to the respondents as well as on the sums credited to the appellant on account of the collection charges.

Their Lordships will, therefore, humbly advise His Majesty that the decrees of the High Court should be modified by the substitution of interest at 6 per cent. per annum for that at 12 per cent. per annum; but that in all other respects they should be affirmed. The appellant having succeeded on only one point should recover one-half of the costs of these appeals.

(41325—3A) W. 5136—2 180 3'37 P. St. G. 336

In the Privy Council

BABU KEDARNATH GOENKA

v.

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SAME

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DELIVERED BY SIR SHADI LAL

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