

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal between Rajah Leelanund Singh and Maharajah Lukhmissar Singh Behadoor from the High Court of Judicature at Fort William in Bengal; delivered 15th July, 1870.

Present:—

LORD CAIRNS.
SIR JAMES W. COLVILLE.
SIR JOSEPH NAPIER.

SIR LAWRENCE PEEL.

THE Appellant in this case originally sued to recover from the Respondent certain villages and lands, alleging that on a true adjustment of the boundaries they belonged to the Nizamut Mehals, and not to Havailee. He claimed also mesne profits. The suit was dismissed by the Court of First Instance, and that dismissal was confirmed by the Sudder Dewanny Adawlut.

Their Lordships, on whose recommendation the Order in question was made, thought that this dismissal was wrong, and in an ordinary case they would have made the final Decree which the Appellate Court in India ought to have made. Not having materials for doing this they suggested the Order in question, which declared the Appellant absolutely entitled to the villages of Goremahee and Goruckpore, and to all the rest of the land in dispute which was not comprised in the settlement of Havailee. By declarations it limited Havailee to 123,207 beegahs including 129 beegahs and 19 biswas part of Beadon settlement, and so much of the land in dispute as belonged to or was attributable to the Bunker and Boondee Mehals. It then

directed the High Court of Calcutta to make the inquiry necessary to understand what this last-mentioned land was, and to proceed in the suit as upon the result of such inquiry might seem just,—dealing with the whole question of costs, including the taxed costs of the Appeal.

Now, in this state of things, their Lordships are of opinion that the Appellant might well have waited the result of those inquiries and accounts before applying to the High Court in Calcutta for the execution of the earlier part of the Decree with reference to those villages to which he was declared entitled; and their Lordships also are of opinion that the High Court at Calcutta might well have declined, if they had been so minded, to execute the earlier part of the Decree until they had completed the whole of the inquiries and accounts. However, the Appellants did apply to the Court for the execution of the part of the Decree which related to the two villages of Goremahee and Goruckpore, to which his title had been declared, and the single Judge of the High Court, on whom appears to have devolved the duty of answering the application, was willing to execute, and proceeded to execute the Decree, so far as regards possession of these two villages. He stated his opinion to be, that with regard to mesne profits, inasmuch as the Order of Her Majesty in Council had not specifically mentioned anything about mesne profits, it would not be proper for the Court in India, in executing a Decree, to make any Order with regard to the mesne profits.

That Order standing would of course be an impediment hereafter, even after the inquiries directed by the other part of the Decree were completed, in the way of any application by the Appellant on the subject of mesne profits from those two villages; and, inasmuch as their Lordships are of opinion that had the first part of the Decree stood alone, it would have been one of the consequential directions proper to be given, to ascertain the amount of mesne profits at the time that possession of the villages was given, they think that, inasmuch as one part of the Decree, namely, that with regard to possession, has been executed by the High Court, everything connected with that possession should be executed at the same time.

Their Lordships are of opinion that the right to mesne profits is consequential on the declaration in the Decree, and upon possession. They, therefore, think that the High Court should proceed to ascertain, either itself or by an issue properly framed, to be answered by the local Court, what the amount due to the Appellant for mesne profits upon these two villages is. They will, therefore, humbly recommend to Her Majesty that an Order should be made to that effect; but, inasmuch as the difficulty has arisen, partly by the application of the Appellant to execute the Decree piecemeal, and partly by the erroneous apprehension which the Judge appears to have entertained of the effect of the Decree of their Lordships, their Lordships think it a case in which there ought to be no costs of the Appeal.

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