

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Munshi Prag Narain v. Thakur Kamakhia  
Singh and others, from the Court of the  
Judicial Commissioner of Oudh ; delivered  
the 20th July, 1909.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD DUNEDIN.

LORD COLLINS.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

*[Delivered by Lord Macnaghten.]*

This is a very idle Appeal.

In November, 1897, the Appellant obtained a Decree against the predecessor in title of the Respondents declaring that on the 1st of May, 1898, Rs.85,866. 15. 6 would be due to him on the footing of a certain mortgage bond, and ordering a sale in default of payment.

In February, 1901, the property was put up to sale by auction in execution of the Decree. It was knocked down for Rs.82,000 to the Appellant, the Decree-holder, who had leave to bid.

On the 15th of December, 1901, the Appellant as purchaser, obtained possession of the property. In September, 1903, the sale was set aside for irregularity. In March, 1904, the Respondents

paid to the Appellant the sum found due to him by the Decree and possession of the property was restored to them.

Then the Respondents applied in the execution proceedings for mesne profits and interest. The application was dismissed on the ground that it ought to have been made by separate suit. The Court of the Judicial Commissioner on appeal reversed that Order. Thereupon the Lower Court made an Order allowing mesne profits with interest and dismissing a claim on the part of the Appellant to interest in respect of his purchase money for the period during which he was held accountable for profits received. On appeal the Court affirmed this Order.

The present Appeal has been brought from the last mentioned Order. In effect it involves both Orders of the Court of the Judicial Commissioner.

It is not disputed that the Respondents are entitled to recover mesne profits with interest. But it was argued that, having regard to certain provisions in the Code of Civil Procedure taken in connection with the definition of a "Decree" in Section 2 of the Code, a separate suit was required, although it was admitted that precisely the same relief would be obtained whether the application were made in a separate suit or in the execution proceedings. It was also argued that the Appellant was entitled to interest in respect of his purchase money.

In their Lordships' opinion there is no substance in either of these contentions. The claim of the Respondents to have the questions in dispute determined in the execution proceedings is justified by Sections 583 and 244 of the Code of Civil Procedure. Even if the point were doubtful, their Lordships would not be disposed,

at this stage of the proceedings, to permit the expense and delay of a separate suit.

The claim of the Appellant to be allowed interest is absurd. The purchase money was not actually paid. It was set off against the amount due under the Decree. The miscarriage at the sale in February, 1901, was the fault of the Appellant. It is out of the question that he should be allowed to make a profit at the expense of the Respondents out of his own error, and so in effect recover interest not allowed to him by the Decree.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be dismissed.

The Appellant will pay the costs of the Appeal.

