

Privy Council Appeal No. 101 of 1923.

Patna Appeal No. 45 of 1921.

Kedarnath Goenka - - - - - *Appellant*

v.

Anant Prasad Singh and Others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 9TH FEBRUARY, 1925.

Present at the Hearing :

LORD SHAW.

LORD CARSON.

LORD BLANESBURGH.

SIR JOHN EDGE.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

The question raised on this appeal is one of procedure. The judgments of the Courts below are concurrent; they are gathered together in the final paragraph of the judgment of the High Court, in which Mr. Justice Das says:—

“ I hold that, under the Code of 1882, a proceeding for the ascertainment of mesne profits was a proceeding in execution and that, as the decree, in the present case, was passed under the Code of 1882, such proceedings must be held in execution and not in the suit. That being so, Order 22, Rule 12, applies, and it must follow that substitution was not necessary.”

Their Lordships have heard a persistent argument criticising the entire authorities cited in the case; they have considered that argument and the authorities; and they now declare that nothing has been urged which would induce them upon this point of procedure to express disagreement with the result arrived at in the Courts below.

In their Lordships' opinion, the appeal accordingly ought to be dismissed, and advice will be humbly tendered to His Majesty in that sense.

In the Privy Council.

KEDARNATH GOENKA

v.

ANANT PRASAD SINGH AND OTHERS.

DELIVERED BY LORD SHAW.

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