

*Privy Council Appeal No. 52 of 1940*  
*Patna Appeals Nos. 26 and 27 of 1939*

Kedar Nath Goenka - - - - - Appellant  
v.

Maharaj Kumar Babu Bageswari Prasad Singh and others  
Respondents

Kedar Nath Goenka - - - - - Appellant  
v.

Maharaj Kumar Baku Bageswari Prasad Singh and others  
Respondents  
(Consolidated Appeals)

FROM

THE HIGH COURT OF JUDICATURE AT PATNA

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 18TH NOVEMBER, 1941

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*Present at the Hearing :*

LORD ATKIN

LORD THANKERTON

LORD ROMER

SIR GEORGE RANKIN

[Delivered by LORD ATKIN]

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Their Lordships do not find it necessary to hear counsel for the respondents in this case.

These are appeals from decrees of the High Court at Patna, which reversed decisions of the Subordinate Judge on two matters which arose under these circumstances: In 1901, a certain property in Bihar was sold by the Collector for arrears of land revenue. It belonged to the respondents or their predecessors. There being an irregularity in the sale, the present appellant, whose father had been the purchaser, by a decree which was given in a suit against him for possession was compelled to surrender the property. In that suit possession was decreed and mesne profits were assessed by the Subordinate Judge. He assessed the mesne profits at a particular rate and he gave interest at 12 per cent. throughout.

There was an appeal from that decision and the High Court increased the amount of the mesne profits, but they decreed that interest should be at 12 *per cent.* up to the date at which possession of the property was given to the present respondents and that after that the interest should be six *per cent.*

There was an appeal from that decision to the Privy Council and the Privy Council varied the decree only by saying that interest should be at 6 *per cent.* throughout. Subject to that, their Lordships affirmed the decision of the High Court.

The result of those proceedings was that the figure arrived at on the footing of interest as given by the High Court was a sum of 89,000 rupees, whereas the figure which was the right figure as approved by the Privy Council was some 75,000 rupees.

In the meantime, while the decree of the Subordinate Judge stood and while the interest stood at the rate of 12 *per cent.*, the present appellant had brought into court the sum of 61,000 rupees as being enough to meet the position. Soon after payment in, that sum was taken out by the present respondents. The amount due to the respondents turned out, according to the order of the High Court as approved by the Privy Council, to be a sum which was in excess of 61,000 rupees, namely, 75,000 rupees and the result was that when the appellant had paid in 61,000 rupees he paid in less than the sum that was eventually found to be due to the present respondents.

Other matters arose and thereupon execution was eventually sought of the decree against the present appellant, but the appellant got in first with an application for restitution.

The first of these appeals arises on his petition for restitution, namely, payment back to him of the 61,000 rupees which he had paid into Court and which the respondents had taken out.

That depends upon the provisions of section 144 of the Civil Procedure Code. That section provides:—

“ Where and in so far as a decree is varied or reversed, the Court  
“ of first instance shall, on the application of any party entitled to any  
“ benefit by way of restitution or otherwise, cause such restitution to  
“ be made as will, so far as may be, place the parties in the position  
“ which they would have occupied but for such decree or such part  
“ thereof as has been varied or reversed ”.

It appears to their Lordships impossible to suggest that the appellant, who, after all, only paid in a sum which was less than the sum which turned out to be due to the respondents, could claim that he could have restitution of that money, he at the same time making in that petition, be it observed, no suggestion that he would pay the actual amount of the decree in respect of which he paid in the money. That, however, is not so material. There was a larger sum due from him than the sum which he paid in, and therefore in the opinion of their Lordships, following the opinion of the High Court, the section has no application at all. Indeed, the Subordinate Judge would appear to have been of that opinion, but he misled himself somehow or other into the mistaken belief that the respondents before the High Court, when the matter of the amount of the decree was adjusted by that Court, had withheld from the High Court the fact that this amount of money had been paid into Court and been taken out. It is, first of all, only necessary to say that there was no such suppression of the fact, which was brought home to the High Court who knew all about it, and, secondly, that had it been suppressed, it was quite irrelevant to the matter that the High Court had to deal with, which was what was the proper decree to make after the judgment given by the Privy Council and what was the form of the decree which ought to have been made by the Subordinate Judge at the time that he made it. No question arises at all, in the opinion of their Lordships, in reference to this question of restitution. The appellant had no right to restitution, and his petition praying for it was properly dismissed.

The other appeal depended upon the question of the figures in the execution decree. That, again, has been quite rightly adjusted. The real complaint made by the appellant on the restitution appeal is that, unless some credit is given somewhere for this 61,000 rupees, injustice would be done. That is perfectly true: injustice would have been done on the execution decree if that amount had not been taken into account. It has been taken into account and quite correct figures have been arrived at. Therefore, the appeal in respect of that matter must be dismissed.

There appears to their Lordships to be no ground whatever for suggesting that anything wrong is to be found in either of the orders made by the High Court in respect of the matters under appeal and in these circumstances their Lordships will humbly advise His Majesty that these appeals be dismissed and that the appellant pay the costs.



In the Privy Council.

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KEDAR NATH GOENKA

2.

MAHARAJ KUMAR BABU BAGESWARI  
PRASAD SINGH AND OTHERS

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*(Consolidated Appeals)*

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DELIVERED BY LORD ATKIN