

*Privy Council Appeal No. 79 of 1929.*

*Patna Appeal No. 18 of 1928.*

Raghubans Narain Singh and others - - - - *Appellants*

*v.*

Khub Lal Singh and another - - - - *Respondents*

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 12TH MAY, 1931.

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*Present at the Hearing :*

LORD BLANESBURGH.

LORD ATKIN.

SIR LANCELOT SANDERSON.

[*Delivered by* LORD BLANESBURGH.]

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This case has, in one form or another, been litigated for many years, and it has necessitated calculations of acreage and undivided interests of much complexity and nicety. But the question now at issue between the parties is simple.

The appellants (it will be convenient to refer under that description to them and their predecessors in interest for the time being) are co-sharer Maliks of certain Tauzis in Mauza Madanpur Sri Ram, in the District of Monghyr. Their share was in lease to the predecessor of the first-party respondent (it will be convenient to refer under the title respondent to the first-party respondent and his predecessors in interest for the time being), himself a co-sharer and also lessee of some other co-sharers, and in possession of 221 bighas or thereby of khudkasht lands on which indigo was grown. After the expiration of the lease from them to the respondent the appellants, on the 23rd July, 1909, filed a suit in the First Court of the Subordinate Judge at Monghyr, for recovery of possession of their milkiat share, for joint possession over the khudkasht lands to the extent of their share therein and for mesne profits. The suit, No. 349 of 1909, was decreed.

In particular the appellants were awarded joint possession with the respondent in respect of their so-called proportionate share of the 221 bighas and were further awarded Rs. 1,387 on account of mesne profits for 1909. It was directed that further mesne profits against the respondent from the date of the institution of the suit up to date of possession sought to be recovered might on the same being ascertained in the execution department be passed by the Court in favour of the appellants. There was an appeal by the respondent to the High Court of Calcutta, one of the main objections taken by him to the decree being the direction thereby given with reference to mesne profits. The respondent contended that as a co-sharer himself and as lessee of other co-sharers using the land in a reasonable manner and not disputing the title of the appellants, he was entitled to retain his sole possession of the khudkasht lands, and should only be required to make reasonable compensation. This he suggested should be Rs. 4 per annum per bigha on the share of the appellants in the 221 bighas, and in support of that contention he relied on and claimed the benefit of what the High Court of Calcutta calls "the well-known case" of *Robert Watson & Company v. Ram Chand Dutt*, 17 I.A. 110.

The main objection taken by the appellants to the suggestion that they should receive compensation in lieu of joint possession and mesne profits apparently was that the rate of compensation offered by the respondent was absurdly low, and what the High Court did, by its decree of the 1st August, 1913, was to set aside the decree of the first Court and remand the suit for a new trial, setting forth amongst the points which required decision, the question whether to the extent of the share of the appellants they were entitled to khas possession jointly with the respondent of the 221 bighas, and the question to what compensation they were entitled if they were not to have such joint possession.

The suit on remand came again before the learned Subordinate Judge at Monghyr, and he, by his judgment of the 4th February, 1919, found that the respondent was still in possession of the khudkasht lands of which the proportionate share of the appellants was 63 bighas odd; but that in view of the fact that the respondent was a co-sharer malik, and a lessee of the shares of other maliks, and that a partition of the mauza had been effected by a decree in the Civil Court, he did not consider it just and equitable to allow joint possession to the appellants, and he passed a decree for compensation, directing the amount thereof to be determined subsequently. By the formal decree the order made was that the suit be decreed in modification of the appellants' claim and that they should get only compensation in respect of 63 bighas with effect from 1908. That decree was made on the 4th February, 1919. There was an appeal, but the appeal was finally compromised, the respondent agreeing to pay to the appellants Rs. 900 over and above what the

appellants might be entitled to under the decree just stated. The compromise order is dated the 7th March, 1923.

The present appeal arises out of an order made by the learned Subordinate Judge, on a petition presented by the appellants on the 28th January, 1926, to have the amount of compensation awarded by the decree of the 4th February, 1919, assessed.

Upon the petition many questions were discussed, but their Lordships are now concerned with one only. What was to be the period over which, by virtue of that decree, the payment of compensation was to extend? The respondent's contention was that the judgment and decree being silent on the question no compensation at all could be allowed, or at all events, only compensation for the period of months—weeks only it might be—between the expiration of the respondent's lease and the institution of the suit, and not for any subsequent period. The contention of the appellants, on the other hand, was that the compensation had, at the respondent's own instance, been awarded in substitution for the mesne profits which, by the original decree, were to be paid until possession given. In this matter of duration, so the appellants contended, no distinction was ever made by the respondent or anyone else between the compensation measured by time and the mesne profits, also measured by time, for which the respondent proposed compensation should be substituted. Moreover, the identity of the two in this respect was confirmed by the reference to *Robert Watson v. Ram Chand Dutt (supra)*, invoked by the respondent where as a matter of equity and good conscience, the payment of compensation was, in point of duration, brought into accord with the principles of Order 20, Rule 12, of the Civil Procedure Code, in accordance with which principles the duration for the payment of mesne profits had in this case also been fixed.

This view of the appellants was accepted by the learned Subordinate Judge. He could see no reason why the analogy of the order should not be applied, and the respondent having remained throughout in possession, he held the appellants entitled to compensation till the expiration of three years from the date of decree—the final decree of the High Court, *i.e.*, the 7th March, 1923, and by his order of the 12th March, 1927, he so directed.

From that order there was an appeal to the High Court at Patna which, by its judgment of the 2nd March, 1928, discharged this part of the order of the 12th March, 1927. In the opinion of the learned Judges of that Court the appellants, under the decree of the 4th February, 1919, were not entitled to a decree for compensation in respect of any period subsequent to the institution of the suit, that is, subsequent to the 23rd July, 1909. Hence this appeal by the appellants.



Now if the question thus at issue is to be settled as one of construction of the order of the 4th February, 1919, their Lordships can have no doubt that the correct view of its effect and intent was that taken by the learned Subordinate Judge. It is clear to them that thereunder the compensation, commencing as it did from the expiration of the lease, was intended to continue just so long as the payment of mesne profits would have continued had the original decree with reference to them remained in force.

The terms of the order itself are not inapt to instruct that conclusion, but it becomes clear to demonstration when the order is read in conjunction with the judgment of the learned Judges of the High Court of Calcutta, from which it appears that the amount, but not the duration of payment, of the compensation was alone in question before them.

In reaching the alternative conclusion the learned Judges of the High Court of Patna do not treat the question as one of construction of the order. They conclude that the appellants are not entitled to a decree for compensation in respect of a period subsequent to the institution of the suit, because it is, they say, a general rule that the Court has no jurisdiction to give plaintiffs a decree in respect of a cause of action that had not accrued to them at the date of the institution of their suit, and as to the answer that in *Robert Watson's case (supra)* the decree was for a sum of money calculated up to the date of the decree passed by the primary Court, the learned Judges concluded that that period was taken by consent of parties, and that in any event there was no adjudication by the Judicial Committee on the point.

Their Lordships do not question the correctness of the general proposition with which the learned Judges commence, and its cogency was enforced by Mr. Pringle's able argument before the Board. But the learned Judges have failed to appreciate the importance and breadth of the decision of the Board in *Robert Watson's case (supra)*. Their Lordships can see no indication in the report of that case that the period for payment there fixed was so fixed by consent, or by any other considerations than those of justice, equity and good conscience, which instructed the decision regardless of considerations purely technical in character. It is a precedent which completely justifies, in point even of principle, the view of the order of the 4th February, 1919, taken by the learned Subordinate Judge.

In their Lordships' judgment his order of the 12th March, 1927, was right and ought to be restored, and the order of the High Court of Patna of the 2nd March, 1928, reversing it, should be discharged. And their Lordships will humbly advise His Majesty accordingly. The first-party respondent must pay to the appellants their costs in the High Court and of this appeal.

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RAGHUBANS NARAIN SINGH AND OTHERS

vs.

KHUB LAL SINGH AND ANOTHER.

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DELIVERED BY LORD BLANESBURGH.

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