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properly consequential on such variation, reversal, setting aside or modification of the decree or order. Thus, the payment of interest is a part of the normal relief granted under section 144 of the Code, as held in *Birendra Nath's case* (supra) also. The other judgment i.e. *Land Acquisition Officer's case* has absolutely no relevancy.

(5) Apart from the above, the respondents have taken the benefit of the money which they have received from the State of Punjab as enhanced amount of compensation which they were not entitled to receive in view of the decree passed by this Court in appeal. Thus, having taken the benefit of the amount, the same must be returned to the appellant with interest, as claimed.

(6) Consequently, all the appeals succeed and are allowed. The orders under appeal are set aside. The cases are sent to the District Judge, Hoshiarpur, for determining the actual amount of interest which the appellant is entitled to claim on the amount of compensation to be refunded. The parties have been directed to appear in the Court of the District Judge on December 9, 1985.

Before J. V. Gupta, J.

SARUP SINGH,—Petitioner.

versus

RATTAN SINGH AND OTHERS,—Respondents.

Civil Revision No. 179 of 1984.

November 6, 1985.

Code of Civil Procedure (V of 1908)—Order 21 Rule 32—Plaintiff's suit for permanent injunction decreed—Such decree be coming final between the parties—Opposite party taking forcible possession of the suit land after the decree of the trial court—Plaintiff decree-holder filing execution application claiming restoration of possession and mesne profits for the land forcibly occupied—Decree not specifying any amount as mesne profits—Application of decree holder allowed and directions as prayed for issued—Executing court—Whether can give such directions—Decree for permanent injunction—Whether liable to be executed only under Order 21 Rule 32 of the Code of Civil Procedure, 1908.

Held, that the decree for the grant of permanent injunction could be executed under Order 21 Rule 32 of the Code of Civil Procedure, 1908 and under the said provisions the executing court has no jurisdiction to issue warrants for possession. Under the above said provisions, the executing court could order detention of the judgment-debtor in civil prison or attach his property,

or could order both, in execution of the decree. Sub-rule (3) to rule 32 of Order XXI further provides that if the attachment has remained in force for six months and the judgment-debtor has not obeyed the decree and the decree holder has applied to have the attached property sold, then, the property be sold and out of the proceeds, the Court may award decree-holder such compensation as it thinks fit. As regards sub rule (5) wherein it has been provided that where a decree for injunction has not been obeyed, the court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done as far as may be, by the decree-holder at the cost of the judgment-debtor, is applicable to a decree for mandatory injunction. As such it has to be held, the decree aforesaid has to be executed in accordance to the provisions of Order 21 Rule 32 of the Code.

(Paras 6 and 8)

Held, that the decree of civil court given in the suit for permanent injunction did not allow mesne profits to the decree holder nor was any order by any court directing the judgment-debtor to furnish security for mesne profits. In the absence of any such order the executing court could not grant mesne profits to the decree holder while executing the decree under order 21 rule 32 of the Code.

(Para 7)

Petition under section 115 C.P.C. for revision of the order of the court of Shri Amarjit Singh Katari, Sub-Judge 1st Class, Jullundur, dated the 23rd December, 1983 dismissing the objections and allowing the execution application and directing the JDs to deliver the vacant possession of the land in dispute to the DH within a period of 30 days and to make payment of Rs. 32,935.98 to the DH within the said period, failing which their properties shall be attached and they shall be sent to Civil Prison.

R. K. Mahajan, Advocate and B. R. Mahajan, Advocate, for the Petitioner.

K. S. Raipuri and J. S. Bhatia, Advocates, for the Respondent.

JUDGMENT

J. V. Gupta, J.

(1) Rattan Singh, decree-holder-respondent, filed the suit against judgment-debtor Sarup Singh, the petitioner, and others, restraining them from dispossessing him from the suit land except in accordance with law. The trial Court found that the plaintiff was in

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possession of *Killas* Nos. 18/2 and 23/2 of rectangle No. 55 whereas he was found to be out of possession of the remaining suit land measuring 23 *kanals* 12 *marlas* purchased by petitioner along with one Gopal Singh. Consequently, the trial Court granted the relief to the plaintiff with regard to the land found to be in his possession and dismissed his suit in regard to the land not found in his possession. After the passing of the decree by the trial Court, the judgment-debtor is said to have taken forcible possession of the land from the plaintiff of which he was not found to be in possession by the trial Court. However, both the parties felt aggrieved against the judgment and decree of the trial Court and filed two separate appeals against the same. The learned Additional District Judge,— *vide* judgment dated October 21, 1978, allowed the appeal filed on behalf of the plaintiff and came to the conclusion that he was in possession of the entire suit land and not of a part thereof, as found by the trial Court. Consequently, his suit was decreed *in toto*. The defendant's appeal was dismissed.

(2) During the pendency of the appeals, the contention raised on behalf of the defendant that the plaintiff had surrendered possession of the land *qua* which his suit had been dismissed by the trial Court was negated and it was observed by the appellate Court,—

“It is not probable that the plaintiff while zealously litigating to protect his possession of the land of his tenancy would surrender any part of it during the pendency of the suit and then file an appeal against the refusal of the relief by the learned trial Court. Such a conduct is unnatural and improbable.”

Ultimately, it was held that the plaintiff was in possession of the land measuring 23 *kanals* 12 *marlas* sold by Hazara Singh to Sarup Singh and another and that the plaintiff was in possession of the entire suit land at the time of the institution of the suit and continued to be so. Second Appeal against the said judgment and decree of the lower appellate Court was filed by the defendant in this Court which was dismissed on February 15, 1979. As observed earlier, since the defendant is said to have taken forcible possession of the suit land purchased by him, after the decree of the trial Court, the plaintiff filed the execution application dated August 16, 1981, under Order XXI rule 32, Code of Civil Procedure, (hereinafter called the Code). Therein, he also prayed that the judgment-debtor

be ordered to pay two-thirds share of the produce by way of *mesne* profits because the decree-holder was a tenant on the said land. The said application was contested on behalf of the judgment-debtor *inter alia* on the ground that the same was not maintainable and that the decree-holder was not entitled to any *mesne* profits as he was neither in possession of any land, nor he ploughed anything on the land. It was also pleaded that the judgment-debtor never disobeyed the decree. On the pleadings of the parties, the executing Court framed the following issues:

1. Whether the decree in question is not executable in view of the objections raised by the JDs in the objection petition?
2. Whether the objections are not maintainable?
3. Whether the DH is entitled to any *mesno* profits? If so, to what extent?
4. Relief.

Under issue No. 1, the executing Court found that the decree was executable. The plea taken by the judgment-debtor that the possession was delivered by the decree-holder himself when he had purchased the suit land was negated. On the question of *mesne* profits, the executing Court found that the decree-holder was entitled to a sum of Rs. 32,935.98. Consequently, the judgment-debtor was directed to deliver vacant possession of the land, in dispute, to the decree-holder within a period of 30 days and to make payment of Rs. 32,935.98 to him within the said period; failing which, his properties were to be attached and he was to be sent to the Civil prison. Dissatisfied with the same, the judgment-debtor has filed this revision petition in this Court.

(3) The learned counsel for the petitioner contended that the decree for the grant of the permanent injunction could only be executed under Order XXI rule 32 of the Code and under that provision, no direction could be given to the judgment-debtor to deliver back the possession. According to the learned counsel, as a matter of fact, there was on question of wilfully disobeying the decree. He got the possession of the suit land, after the suit of the plaintiff was dismissed by the trial Court and in that situation the plaintiff should have sought the decree for possession and not for injunction. In any case, argued the learned

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counsel, in the present case, the executing Court had no jurisdiction to issue warrants for restoration of possession to the decree-holder. In support of this contention, the learned counsel relied upon *Prithivi Singh v. Natha Ram*, (1); *Sarup Singh v. Daryodhan Singh*, (2) and *Murari Lal v. Nawal Kishore*, (3). It was also contended that in any case, the question of allowing *mesne* profits did not arise in execution proceedings as there was no decree to that effect, nor there was any order for furnishing security for *mesne* profits.

(4) On the other hand, the learned counsel for the decree-holder submitted that under Order XXI rule 32 of the Code, directions for delivering back the possession to the decree-holder could be given by the executing Court. In support of the contention, the learned counsel relied upon *Onkar Nath v. Shri Gaja Nand*, (4) and *Bagicha Singh v. Suba Singh*, (5). As regards the direction for the payment of the *mesne* profits by the executing Court in the present case, in support thereof, reliance was placed by the learned counsel on the Division Bench judgment of the Allahabad High Court in *Nawab Singh v. Mithu Lal* (6).

(5) I have heard the learned counsel for the parties and have also gone through the case law cited at the bar.

(6) It is the common case of the parties that the decree for the grant of the permanent injunction could be executed under Order XXI rule 32 of the Code. Under the said provision, the executing Court has no jurisdiction to issue warrants for possession as held by this Court in *Prithivi Singh's case* (supra). Under the above-said provisions, the executing Court could order the detention of the judgment-debtor in civil prison or attach his property, or could order both, in execution of the decree. Sub-rule (3) to rule 32 of Order XXI further provides that if the attachment has remained in force for six months and the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, then, the property be sold and out of the proceeds,

(1) 1980 P.L.J. 199.

(2) A.I.R. 1972 Delhi 142.

(3) 1961 Punjab Law Reporter 756.

(4) 1984 (2) R.C.R. 529.

(5) A.I.R. 1983 Punjab and Haryana 174.

(6) A.I.R. 1935 Allahabad 480.

the Court may award decree-holder such compensation as it thinks fit. As regards sub-rule (5), wherein it has been provided that where a decree for injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done as far as may be, by the decree-holder at the cost of the judgment-debtor, is applicable to a decree for mandatory injunction, as held by this Court in *Murari Lal's case* (supra). It has been categorically held therein that this rule has no applicability to a decree where prohibitory injunction has been granted. The Single Bench judgment of this Court in *Baggicha Singh's case* (supra) relied upon by the learned counsel for the decree-holder, nowhere lays down that a direction for delivering back the possession could be given under Order XXI rule 32 of the Code in execution of a decree for prohibitory injunction. In *Onkar Nath's case* (supra), relied upon by the learned counsel for the decree-holder, no such proposition of law is enunciated. In paragraph 3 of the judgment, it was *inter alia* observed,—

“Consequently, the executing Court directed the attachment of the property after recording the finding that the respondent had deliberately disobeyed the decree for injunction”.

Besides, in the above-said case, the learned Judge specifically observed in paragraph 4 of the judgment,—

“The respondent from his acts is clearly dishonest person and is not worthy of being believed by any Court. In these circumstances, there is no reason why petitioner should not be granted warrants for possession of the property which has been forcibly occupied by the respondents and in violation of the decree for injunction.”

Such is not the position in the present case. In this case, the judgment-debtor is said to have taken possession of the suit property after the decree of the trial court whereby the plaintiff's suit was partially dismissed.

(7) As regards the ordering of the *mesne* profits by the executing Court, as observed earlier, the learned counsel for the decree-holder relied upon *Nawab Singh's case* (Supra). It is not disputed

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that there was no decree of a civil Court allowing *mesne* profits to the decree-holder, nor there was any order by any Court directing the judgment-debtor to furnish security for *mesne* profits. In the absence of any such orders, the executing Court could not grant *mesne* profits to the decree-holder while executing the decree under Order XXI rule 32 of the Code. The facts in *Nawab Singh's case* (supra) before the Allahabad High Court were quite different. The *ratio* of the said case is that where the judgment-debtor has, by his own act, made it impossible for himself to obey the decree he cannot escape from the liability to pay compensation which will be enforced after the attachment has subsisted for three months; if, however, it be impossible to award the decree-holder any compensation, then the only remedy which must be adopted would be to detain him in civil prison. No such situation has arisen in the present case. The property of the judgment-debtor has not been ordered to be attached. After the attachment if the judgment-debtor does not obey the decree, only then the decree-holder may apply for sale of the said attached property and it may be at that stage that compensation, if any, as the executing Court thinks fit, may be allowed to the decree-holder. Apart from that in *Nawab Singh's case* (supra), the injunction granted was for restraining the judgment-debtor from doing an act. He did the act in disobedience of the injunction and, thus, made it impossible for himself to obey the decree. Therefore, the said case is clearly distinguishable on facts and it nowhere lays down that *mesne* profits could be allowed under Order XXI rule 32 of the Code.

(8) In this view of the matter, this revision petition succeeds and is allowed. The impugned order is set aside and the case is sent back to the executing Court for deciding the matter afresh in accordance with law on the application filed by the decree-holder under Order XXI rule 32 of the Code. The necessary issue will be as to whether the judgment-debtor disobeyed the decree sought to be executed and if so, how the same can be enforced. The parties through their counsel have been directed to appear in the executing Court on 7th December, 1985. The records of the case be sent back forthwith.

H.S.B.