
(2014) 02 BOM CK 0030

In the Bombay High Court

Case No : Second Appeal No. 91 of 2009

Aura Fernandes

APPELLANT

Vs

Joao Jose Nepomoceno Coelho (D)

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12

Citation : (2014) 6 ALLMR 134

Hon'ble Judges : F.M. Reis, J

Bench : Single Bench

Advocate : M. Fernandes, Advocate for the Appellant; C.A. Coutinho, Advocate for the Respondent

Judgement

F.M. Reis, J.—Heard Mr. M. Fernandes, learned counsel appearing for the appellant and Mr. C.A. Coutinho, learned counsel appearing for the respondent Nos. 1(a), 1(d)(i), (ii) and 2. The above appeal came to be admitted by order dated 16.02.2012 on the following substantial question of law:

"Whether the Lower Appellate Court was justified to direct the payment of mesne profits without holding any inquiry as contemplated under the provisions of Order 20 Rule 12 of the Civil Procedure Code?"

2. Mr. Fernandes, learned counsel appearing for the appellant has taken me through the judgment of the learned Lower Appellate Court and pointed out that the learned Judge besides directing the demolition of the suit structures as mentioned in para 4 of the operative part of the impugned judgment and granting a permanent injunction restraining the appellant from interfering with the suit land except the mundkarial area, further directed the appellant to pay to the respondents a sum of Rs. 500/- per month as damages from the date of the filing of the suit until the suit structures shown in red and blue colour in the plan at Exhibit-A (Exhibit 37) are demolished. The learned counsel further pointed out that the substantial question of law framed by this Court is to challenge the said relief granted by the learned Lower Appellate Court at para 6. The learned

counsel has thereafter taken me through the Order 20 Rule 12 of C.P.C. and pointed out that such adjudication of damages can be directed even after the decree is passed. The learned counsel as such points out that unless there is an inquiry with that regard the question of directing the payment of the said amount would not arise. The learned counsel further submits that the respondents have not led any evidence to substantiate their claim of damages.

3. On the other hand. Mr. C.A. Coutinho, learned counsel appearing for the respondents has supported the impugned judgment and pointed out that the learned Judge has rightly directed the demolition of the encroachment carried out by the appellant in the immovable property belonging to the respondents. The learned counsel further pointed out that the appellant has no right to carry out any such encroachment or interfere with the remaining portion of the property. The learned counsel further pointed out that once the Court has come to the conclusion that the appellant has been in illegal occupation of the immovable property, the Court can grant mesne profit in terms of Order 20 Rule 12 of C.P.C. The learned counsel fairly concedes that such amount can be ordered to be paid after an inquiry is held under Order 20 Rule 12 of C.P.C. even after the decree of possession is ordered.

4. I have considered the submissions of the learned counsel and I have also gone through the records. Upon hearing the learned counsel, the only aspect to be considered is whether the learned Lower Appellate Court was justified to direct the payment of damages of Rs. 500/- per month from the date of the filing of the suit until the demolition of the disputed structures put up by the appellant. To that effect Order 20 Rule 12 of C.P.C. reads thus :

"12. Decree for possession and mesne profits.-

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree--

(a) for the possession of the property;

[(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;]

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until--

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in

respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

5. On plain reading of the said provisions, I find that it cannot be disputed that the Court can direct an inquiry to be conducted while passing the decree to determine the damages/mesne profit to which the decree holder would be entitled. In the present case, considering that there is no evidence on record to substantiate the claim of the mesne profits as directed by the learned Lower Appellate Court, I find that it would be appropriate that the learned Judge should have directed the learned Trial Court to hold an inquiry under Order 20 Rule 12 of C.P.C. with regard to such claim in accordance with law. The substantial question of law is answered accordingly. In view of the above, I pass the following:

ORDER

"(i) The appeal is partly allowed.

(ii) The relief No. 6 in the impugned judgment of the learned Lower Appellate Court dated 22.08.2008 is quashed and set aside.

(iii) The learned Trial Judge is directed to hold an inquiry under Order 20 Rule 12 of C.P.C. and determine the mesne profit payable to the respondents after hearing the parties in accordance with law.

(iv) The impugned judgment dated 22.08.2008 stands modified accordingly.

(v) Parties are directed to appear before the learned Trial Court on 07.04.2014 at 10.00 a.m.

(vi) The appeal stands disposed of accordingly."