
(1991) 09 MP CK 0018
In the Madhya Pradesh High Court
Case No : M.P. No. 988 of 1988

Babu Lal Janved and Others

APPELLANT

Vs

Parwati Bhogiram and Others

RESPONDENT

Date of Decision : 16-09-1991

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 12(1), Order 20 Rule 18
Constitution of India, 1950 — Article 227

Citation : (1992) 37 MPLJ 282 : (1992) MPLJ 282

Hon'ble Judges : R.C. Lahoti, J;K.K. Dube, J

Bench : Division Bench

Advocate : K.S. Shrivastava, for the Appellant; Arun Mishra, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Lahoti, J.

The judgment-debtor/petitioners are aggrieved by the order of the executing Court directing recovery of mesne profits from them to the decree-holders/respondents Nos. 1 to 3, consistently with the decree passed by the original Court.

Learned counsel for decree-holder has made available, a copy of judgment in the original suit which shows that the plaintiffs/respondents had sued the petitioners for partition of a joint holding and also for recovery of mesne profits. By judgment and decree dated 7-8-1991, the trial Court directed the suit holding to be partitioned and an amount of Rs. 400/- to be paid by the defendant/judgment-debtor to the plaintiffs/decrees-holders by way of past mesne profits with future mesne profits calculated @ Rs. 400/- per annum, from the date of the suit till partition of the holding.

Admittedly, the partition has not yet taken place. The decree-holders have taken out execution for recovery of the mesne profits as above.

The decree-holders' right to recover mesne profits was objected to before the executing Court which was overruled. The order of the executing Court has been upheld in revision.

Learned counsel for the petitioner has submitted that in no case, the decree-holders were entitled to recover mesne profits for a period exceeding 3 years from the date of the decree. He has referred to Rule 12 of Order 20 of Civil Procedure Code, which reads as under : -

"R. 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 (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

It is true that the decree-holders/respondents are proceeding to recover the mesne profits for a period exceeding 3 years from the date of the decree. Yet having heard the learned counsel for the parties, we are satisfied that no fault can be found with the impugned orders of the Courts below.

Order 20, Rule 12 of CPC applies to a suit for recovery of possession of immovable property and mesne profits. A suit for partition coupled with a prayer for recovery of mesne profits is governed by Order 20, Rule 18 of Civil Procedure Code. Applying the law laid down by a Full Bench in *Babburu Basavayya and Ors. v. Babburu Guravayya and Anr.*, AIR 1951 Madras 938, a learned single Judge of High Court of Madras in *D. Nataraja Achari Vs. Balambal Animal*, has held: -

"The question of the applicability of the provisions of Order 20, Rule 12, to the instant case does not arise because in this case, though the application purports to be one under Order 20, Rule 12, Civil Procedure Code, it would fall within the second and third categories enumerated by the Full Bench and to which the

provisions of Order 20, Rule 12, will not be applicable. Order 20, Rule 18, CPC would govern the present case and therefore, the objection of the learned counsel for the appellant that the mesne profits cannot be given for more than three years from the date of the decree does not hold good."

The Full Bench in Babburu Basavayya's case (supra) had observed :-

"It is necessary at the outset to distinguish between three different types of cases in which a question of profits or mesne profits might arise - (1) suits for ejectment or recovery of possession of immovable property from a person in possession without title, together with a claim for past or past and future mesne profits (2) suits for partition by one or more tenants-in-common against others with a claim for account of past or past and future profits (3) suits for partition by a member of a joint Hindu family with a claim for an account from the manager. In the first case, the possession of the defendants not being lawful, the plaintiff is entitled to recover "mesne profits" as defined in Section 2, clause (12) of the Civil Procedure Code, such profits being really in the nature of damages. In the second case, the possession and receipts of profits by the defendant not being wrongful the plaintiff's remedy is to have an account of such profits making all just allowances in favour of the collecting tenant-in-common. In the third case, the plaintiff must take the joint family property as it exists at date of the demand for partition and is not entitled to open up past accounts or claim relief on the ground of past inequality of enjoyment of the profits, except where the manager has been guilty of fraudulent conduct or misappropriation."

We find ourselves in respectful agreement with the view taken by High Court of Madras and therefore hold that the petitioners were not justified in objecting to the recovery of mesne profits by relying on 3 years" rule.

Even otherwise, the petitioners could not have succeeded. An enquiry into mesne profits is to be directed only under clauses (b) and (c) of Sub-rule 1 of Rule 12, of Order 20, Civil Procedure Code. The original court was not debarred from passing a final decree for mesne profits straightway without directing an enquiry thereinto, if there was material available before it to determine the amount of mesne profits. The finding in the original suit was that the defendant/petitioners were in possession of entire holding to the exclusion of the plaintiff/decreed-holders. The entire holding is little more than 15 Bighas. The decree-holder/respondents were entitled to separate possession and enjoyment over an area little more than 2 Bighas. The trial Court therefore assessed, and very reasonably in our opinion, that the plaintiff/decreed-holders were entitled to recover Rs. 400/- per annum from the judgment-debtors in possession, until the land was partitioned and separate possession was made over to the decree-holders. That being the decree, the courts below were fully justified in holding that the decree-holders were entitled to recover the future mesne profits at the awarded rate for the period commencing with the date of decree and expiring with the date of partition.

We find no fault with the impugned order. The petition is held to be without any merit. It is dismissed. We make no orders as to costs.