
(2006) 12 AP CK 0048
In the Andhra Pradesh High Court
Case No : CRP No. 5787 of 2006

Bushi Raja Rao and Others

APPELLANT

Vs

Tayi Subba Rao

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152, 153
Constitution of India, 1950 — Article 227

Citation : (2007) 1 ALD 683 : (2007) 2 ALT 369

Hon'ble Judges : V. Eswaraiah, J

Bench : Single Bench

Advocate : S. Surya Prakasa Rao, for the Appellant;

Final Decision : Dismissed

Judgement

V. Eswaraiah, J.—The petitioners are the defendants and the respondent is the plaintiff. The respondent filed the suit O.S. No. 5 of 1995 on the file of Senior Civil Judge, Bhimavaram, for recovery of possession of the plaint schedule property after ejecting the defendants-petitioners herein from the plaint schedule property and for recovery of Rs. 31,800/- towards damages for use and occupation of the plaint schedule property for dalva of 1993-94 and sarva of 1994 and towards the value of the coconuts for the year 1994 and also for grant of future profits till the date of delivery of possession of the plaint schedule property.

2. The said suit was decreed by judgment and decree, dated 4-6-2001, holding that the plaintiff is entitled for recovery of possession of the plaint schedule property after ejecting the defendants therefrom and that the defendants also shall pay a sum of Rs. 22,500/- towards the value of the crops, Rs. 500/- towards value of the coconuts and Rs. 7,529-25 ps. towards costs.

3. Obviously, the said value is towards past mesne profits prior to the filing of the suit. However, no decree has been passed for the payment of future mesne

profits. Aggrieved by the said judgment, the defendants filed A.S. No. 109 of 2002 on the file of Additional District Judge-cum-Fast Track Court, Bhimavaram, and the appeal is still pending. In the meanwhile, the plaintiff filed I.A. No. 733 of 2005 in O.S. No. 5 of 1995 on the file of the Senior Civil Judge, Bhimavaram, under Sections 151, 152 and 153 of C.P.C. for amending the decree in O.S. No. 5 of 1995 incorporating whether the plaintiff is entitled for future mesne profits to be determined on a separate application to be filed by the plaintiff. The said application was resisted by the defendants.

4. On hearing both the Counsel and the decisions cited by both the parties, the trial Court held that the facts in the decisions cited by the learned Counsel appearing for the defendants in Kunhayammed and Others Vs. State of Kerala and Another, and The Singareni Collieries Company Limited Vs. H. Sugunakar Rao and The Land Acquisition Officer, (Special Thasildar/Land Acquisition Unit) Singareni Collieries Company Limited, , disclose that by the time of trial Court entertaining a petition for amendment of decree, the appellate Court already disposed of the appeal. In such circumstances, the apex Court on the principle of doctrine of merger, it was held the trial Court was barred from entertaining the petition for amendment of decree. Thus, the said decisions do not apply to the case on hand. However, in the instant case, the judgment and decree passed by the trial Court is still under consideration in the appeal. Further, it is well established proposition of law that the final decree is nothing but continuation of suit proceedings. Infact, when the plaintiff declared as a title holder and the decree is for recovery of possession, he is also entitled for recovery of future mesne profits.

5. No doubt, the grant of past mesne profits is a discretionary relief. But, once the relief has been granted for recovery of possession, I am of the opinion that the mesne profits also shall follow, otherwise, passing of the simple decree for recovery of the property and if the said property is not recovered, due to the objection or obstruction by the defendants, it cannot be said that the defendants are entitled to enjoy the property as well as the income derived therefrom depriving the right of the title holder. Any determination of the mesne profits and recovery of the possession is subject to the final judgment and decree that may be passed in the appeal. But, as long as the judgment and decree of the trial Court is not modified or finally confirmed, I am of the opinion that the trial Court still holds the right and jurisdiction to amend the decree in respect of such nature of cases.

6. In view of the aforesaid facts and circumstances of the case, I do not see any illegality or irregularity in the impugned order warranting interference by this Court under Article 227 of the Constitution of India.

7. Accordingly, the civil revision petition is dismissed. There shall be no order as to costs.

8. It is needless to mention that it is open for the defendants to seek any

appropriate relief in the pending appeal filed by them before the appellate Court.