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(1979) 06 AP CK 0002

In the Andhra Pradesh High Court

Case No : A.S. 500/77 and A.S. 363/77

Kallam Jampareddi — APPELLANT

Vs

Yarava Krishnareddy — RESPONDENT

Date of Decision : 13-06-1979

Acts Referred:
Andhra Pradesh (Andhra Area) Tenancy Act, 1956 — Section 12

Citation : (1979) 06 AP CK 0002

Hon'ble Judges : P. Ramachandra Raju, J;Alladi Kuppuswami, J

Bench : Division Bench

Advocate : P. Babul Reddy and M.V. Ramana Reddy, for the Appellant; P. Ramakrishna Raju and Y. Krishna Reddy, for the Respondent

Judgement

1. The appellant in A.S. No. 500 of 1977 filed a suit, O.S. No. 321 of 1974 on the file of the Subordinate Judge''s Court, Vijayawada for eviction against the respondent. The plaintiff''s case was that the father of the defendant was a tenant of the plaintiff''s vendors and continued to be a tenant under the plaintiff He died on 8-3-1971 leaving a will dated 2-9-1970 where by he bequeathed his right as a cultivating tenant in respect of the suit lands to one of his sons, the defendant. The defendant or any of the others heirs of the deceased tenant did not exercise their option of continuing the tenancy as required under Sec. 12 of the Andhra Pradesh (Andhra Area) Tenancy Act (referred to shortly in this judgement as ''the Tenancy Act''). The plaintiff therefore became entitled to possession of the land. He, filed A.T.P. No. 15 of 1971 on the file of the Tahsildar, Gannavaram, against the defendant and his two brothers for eviction. They contended that it was only the defendant that had the right to cultivate the lands by reason of the will executed by the father and the other two sons had nothing to do with the lands in question. The Tahsildar held that the defendant had not exercised his option u/s 12 of the Tenancy Act and was, therefore, in law, a trespasser. As there was no relationship of landlord and tenant, he directed the plaintiff to seek his remedy in a civil Court. An appeal as against this order was dismissed by the Revenue Divisional Officer, Nuzvid, and a further revision

petition to this Court was also dismissed. Thereafter, the plaintiff filed the suit for eviction which has given rise to this appeal. In this suit, the defendant contended that he had exercised his option by giving a notice in writing and in support of that contention, be relied upon a Money Order coupon, Ex.B7 dated 30-3-1971 whereunder he sent Rs. 200/- to the plaintiff. In this Money Order coupon, the defendant wrote that he had acquired the tenancy rights under a will executed by his father and that he was sending the rent due for the year 1970-71.

2. It was contended by the plaintiff before the Subordinate Judge that the Money Order coupon, Ex. B. 7 was not genuine. Even if it was true it did not satisfy the requirements of Section 12 of the Tenancy Act and it could not be said to be a notice in writing exercising an option to continue the tenancy for the unexpired portion of the lease on the same terms and conditions on which the deceased cultivating tenant was holding within the meaning of Section 12. It was further contended that the Money Order was refused and, therefore, it cannot be said that the plaintiff was aware of the notice in writing if, in law, the Money Order amounted to such a notice. The learned Subordinate Judge held, after discussing the evidence, that the defend ant exercised his option to continue as tenant as required by Section 12 of the Tenancy Act and was, therefore, entitled to continue as tenant. He held that the writing in the Money Order coupon amounted to a notice in writing within the meaning of Section 12 and that the plaintiff noted the contents when it was shown to him by the Branch Post-Master before he refused to accept the Money Order. In the result, he held that the plaintiff was not entitled to possession. The plaintiff had also claimed damages for use and occupation for the years 1971-72 to 1973-74. The Court below held that he would be entitled to rent on its finding that the defendant continued as a tenant. But the Court below found that he would be entitled to Rs. 750/- per year, in this connection, it may also be noted that the Court below described the amount of Rs. 750/- as mesne profits while holding that the defendant was continuing as a tenant.

3. The Plaintiff has preferred Appeal No. 500 of 1977 questioning the judgment and decree of the Court below in so far as it held that the plaintiff was not entitled to recovery of possession. The plaintiff also claimed that he is entitled to damages for use and occupation at Rs. 1,400/- per year.

4. The defend at has preferred Appeal No. 363 of 1977 contending that once the Court has found that he continued as a tenant, he is liable to pay only the agreed rent, which was Rs. 200/- per year, until and unless a fair rent is fixed.

5. The main question for consideration in this appeal is whether the defendant had exercised his option as required by Section 12 of the Tenancy Act and, therefore, continued as a tenant. The learned Counsel for the appellant contended firstly that, u/s 12, the appellant''s right to exercise option is given only to the widow and the lineal heirs of the cultivating tenant, The defendant, who is only a legatee, cannot take advantage of the benefit conferred u/s 12. Secondly, it is contended that the option has to be exercised by serving a notice

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in writing on the landlord stating that he exercises his option to continue the tenancy for the unexpired portion of the lease on the same terms and conditions on which the deceased cultivating tenant was Holding. Such a notice was not given in this case and the Money Order coupon, in which it was merely stated that he got the rights of a cultivating tenant of his father under the will, is not sufficient compliance with Section 12, nor was the notice served on the plaintiff as required by Rule 11 read with Rule 9 of the Tenancy Rules. He also contended that the finding of the Court below that the plaintiff had seen the contents of the Money Order coupon is wrong and opposed to the evidence in the case.

6. Sri Ramakrishna Raju, on the other band, submitted that, u/s 12, it is sufficient if the widow or anyone of he lineal heirs exercises the option. In other words, he submitted "how widow and his lineal heirs" should be read as "the widow or anyone or more of the lineal heirs". It is submitted it would lead to grave hardship if the widow and the lineal heirs have to exercise the option and if anyone of them does not join in doing so, the others would not be entitled to the benefit of continuing the tenancy. Secondly, he submitted that the requirement of exercising the option by serving a notice in writing is directory and not mandatory. He further argued that notice in writing need not be in any particular form and the matter contained in the Money Order coupon, Ex. B.7, would be sufficient to constitute a notice in writing within the meaning of Section 12. He also submitted that the finding of the Court below that the plaintiff saw the contents of the Money Order coupon is correct.

7. In support of the contention that the requirement as to notice in writing u/s 12 is directory only and that even sending a Money Order under a Money Order coupon would constitute a notice in writing within the meaning of Section 12. Sri Ramakrishna Raju relied upon a decision of Justice Sheth in V. Veerabhadramma vs. Ramanath 1977 (I) An. WR 420 wherein it was held that, if the legal representatives of a cultivating tenant intimate in any form in writing to the landlord their intention to continue the tenancy within the specified period, it would satisfy the requirement of Sec. 12 of the Tenancy Act. Sri Ramakrishna Raju also contended that there is no reason why a Money Order sent on behalf of the defendant should not be regarded as written intimation exercising his option to continue the tenancy.

8. Sri Babulu Reddy pointed out that the observations of Justice Sheth are in the nature of obiter, as, in that particular case, the learned Judge also found that the rent sent by the Money Order was received and that the Plaintiff did not take any action for one full year during which the defendants continued to be the tenants in respect of the land in question. He also submitted that the decision is not correct in view of the clear language used in Sec. 12 which states that the option shall be exercised by serving a notice in writing. I am of the view that the decision requires reconsideration and having regard to the frequency which this question arises in matters governed by the Tenancy Act, a considered decision should be given by a Division Bench of this Court. Further, the other question

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raised viz.; whether it is sufficient if the widow or anyone of the lineal heirs exercises the option or whether it is necessary that the option should be exercised by all of them is also an important question which would arise frequently for consideration, I understand that there is no reported decision on that point. For these reasons, I am of the view that these appeals should be beard by a division Bench, as I am directing the appeals to be heard by a division bench all other questions raised in both the appeals will also be considered by the Division Bench.

I, therefore, direct these appeals to be posted before a Division Bench.

Judgement

Alladi Kappuswami, J.

9. These two appeals are directed against the judgment and decree in O.S. No. 321/74 on the file of the Subordinate Judge, Vijayawada. The Appellant in A.S. No. 500/77 filed the said suit for eviction against the respondent and for possession of the plaint schedule property. He also claimed damages for use and occupation, past and future at the rate of Rs. 1400/- per year per acre.

10. The case of the plaintiff was that, he purchased the plaint schedule property of an extent of Act, 2-57 cents in the village of Peda Vegirala from Jandhyala Ramakrishnasastry and his wife under a registered sale deed dated 6-2-1969. The land had been given on lease by the Vendors to Kutumbareddi father of the defendant, and be was in possession as a tenant on the date of sale in favour of the plaintiff Kutumbareddi continued as the tenant of the plaintiff. He died on 8-3-1971 leaving a will dated 2-9-1970 by which he bequeathed his rights as a tenant in favour of the defendant, who is one of his sons. The plaintiff''s case was that the widow and the lineal heirs of Kutumbareddi including the defendant did not exercise their option of continuing as tenants under the plaintiff on the same terms and conditions of the lease in favour of their father and defendant''s father had also committed default in payment of rent. The plaintiff therefore filed an eviction petition under the Andhra Tenancy Act against the defendant and his two brothers. Before the Tenancy Tahsildar, the defendant''s brothers disclaimed any interest in the suit land, the Tenancy Tahsildar held that the defendant did not exercise his option to continue as a tenant u/s 12 of the Andhra Tenancy Act. He therefore came to the conclusion that there was no relationship of landlord and tenant between the plaintiff and the defendant and the remedy of the plaintiff was to seek redress in a Civil Court. The defendant preferred an appeal to the Revenue Divisional Officer, Nuzvid, which was dismissed, and a further Revision Petition to this Court in C.R.P. No. 2435/72 was also dismissed on 19-3-74. The Plaintiff thereupon filed the present suit contending that the defendant is a trespasser and he had no right to continue in possession of the plaint schedule property. He prayed for a decree for possession and also claimed mesne profits at Rs. 1400/- per year per acre for the years 1971-72, 1972-73 and 1973-74, and also future mesne profits at the same rate.

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11. The defendant contended interalia that after the death of his father he was a tenant under the plaintiff and he was entitled to continue as a tenant. It was not correct to state that the defendant and his brothers did not exercise their option to continue as tenants u/s 12 of the Andhra Tenancy Act. The defendant sent a Money Order on 30-3-1971 to the plaintiff for a sum of Rs. 200/- payable for fasli 1380 but the plaintiff wilfully refused to receive the same. In the circumstances the defendant cannot be treated as a trespasser, but should be regarded as a cultivating tenant and the suit for eviction is not maintainable regarding the claim for mesne profits he submitted that the plaintiff was entitled only to rent which was Rs. 200/- per year.

12. The learned Subordinate Judge after considering the oral and documentary evidence in the case held that the defendant had exercised his option to continue as tenant u/s 12 of the Andhra Tenancy Act and that he is entitled to continue as a tenant. The plaintiff was therefore not entitled to evict the defendant from the plaint schedule property. The lower Court also came to the conclusion that a sum of Rs. 750/- would be a reasonable amount for the schedule land that could be granted towards mesne profits per year for the schedule property for the three years 1971-72 to 1973-74 and at the same rate from the date of suit.

13. The plaintiff has preferred the appeal A.S. No. 500/77 questioning the decision of the Court below that the plaintiff is not entitled to possession of the suit land and also questioning the quantum of mesne profits awarded to the plaintiff. The defendant in his turn has preferred the appeal A.S. No. 363/77 in which be has urged that having held that the defendant continued as a cultivating tenant, the Court below had no jurisdiction to award mesne profits. It is urged that the rent determined by the Tenancy Court at Rs. 200/- per year as fair rent is the only amount that could be decreed in favour of the plaintiff.

14. The main question for consideration in these two appeals is: Whether the relationship of landlord and tenant existed between the plaintiff and the defendant. It is contended on behalf of the defendant that he had exercised his option to continue as a tenant on the same terms and conditions of lease under which his father was cultivating as a tenant, whereas the plaintiff''s case is that no such option was exercised as contemplated u/s 12 of the Andhra Tenancy Act. Section 12 of the Andhra Tenancy Act is in the following terms:

If a cultivating tenant dies, his widow and his lineal heirs shall have the option to continue the tenancy for the unexpired portion of the lease on the same terms and conditions on which the deceased cultivating tenant was holding and such option shall be exercised by serving a notice in writing on the landlord within a period of three months from the date of demise of such cultivating tenant.

While the Section says that the option has to be exercised by serving a notice in writing, the section in silent as to how the notice in writing has to be served. u/s 19 (2) (b) the Government is authorised to make Rules providing for the manner of service of any notice issued under this Act. Rule 11 of the Andhra Tenancy Act,

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1957 provide that the notice referred to in Section 12 is to be served on the landlord in the same manner as the copy of the application referred to in Rule 9, Rule 9 states that a copy of every application for remission of rent u/s 8 shall be served on the landlord in person or by sending it to him by registered post, acknowledgment due. Thus reading Rules 11 and 9 together it is soon that the notice in writing referred to in Section 12 has to be served on the landlord in person or by sending it by registered post acknowledgment due.

15. The case of the plaintiff is that in this case there was no notice in writing at all by the defendant, nor was any notice served in the manner required by Rules 11 and 9. The defendant relies upon the Money Order sent by him on 30-3-71 together with the matter written in the said M.O. coupon by him as constituting a notice in writing within the meaning of Section 12, apart from the fact that he also informed the plaintiff orally about his option to continue as a tenant As Section 12 expressly provides that the exercise of option should be by notice in writing, it is not relevant to consider whether the case of the defendant that he informed the plaintiff orally is true or not.

16. While sending the Money Order for Rs. 200/-, the defendant states that he wrote as follows in the space for Communication in the M.O. coupon. The matter is in Telugu and may be translated as follows:

On 2-9-70 my father Y. Kutumbareddi bequeathed all his rights in R.S. No. 11/5 of the extent of Ac. 2-57 cents Zarib dry land under a registered will in my favour. My father died on 8-3-71. Therefore by reason of the rights conferred on me under the said will, I am sending herewith Rs. 200/- being the rent for the lease period 1970-71. My father has already paid rent in full for the year 1969-70.

D.W. 4 is the person who worked as Branch Post Master on the relevant date. He deposed that Ex. B-7 is the Money Order sent by the defendant to the plaintiff for Rs. 200/-. If the amount of the Money Order exceeds Rs. 70/- intimation will be sent to the payee and on his appearing before him, the amount will be paid in the Post Office. The plaintiff appeared before him, at the Post Office and asked him two days'' time to receive payment after consulting the advocate. The Plaintiff again came two days later and informed him that he was not willing to receive the amount. So D.W.4 wrote an endorsement on the top of the Money Order and sent it to the sub-Post Office, in the Sub-Post Office, the refusal endorsement on Ex. B-7 was written on 5-4-1971. Ultimately, the Money Order was returned to the defendant. On this evidence, the Court below held that the defendant had mentioned clearly in the Money Order Coupon that he was sending rent in pursuance of the rights he got under the will to continue as a tenant in the scheduled property. It is also the evidence of D.W. 4 that the plaintiff saw the Money Order form personally when he was sent for and having seen what was written in the Money Order Coupon, he refused to receive the Money Order. It was argued that the above evidence on record clearly proves that the defendant had sent intimation to the plaintiff to Continue as a tenant of

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the schedule property in place of his father contemplated u/s 12 of the Andhra Tenancy Act and thus the defendant exercised his option within the prescribed time and the learned Subordinate Judge agreed with the contention. We are unable to agree with the learned Subordinate Judge. All that is stated in the Money Order coupon is that the defendant''s father had bequeathed all his rights in the suit property in favour of the defendant under a will and that the defendant was sending a sum of Rs. 200/- by Money Order for the rent due for the year 1970-71. We do not find any statement therein to the effect that the defendant was exercising his Option to continue as a tenant on the same terms and conditions of the lease under which his father was the tenant. It is no doubt true as urged by Sri. P. Ramakrishna Raju, the learned counsel for the respondent, that Section 12 does not prescribe any particular form in which the notice in writing has to be given. But the terms of Section 12 are clear that there should be a notice by which the defendant exercises his option to continue as a tenant under the same terms and conditions as before. It is true that such a notice may be contained even in a Money Order coupon, but it must be clear from the terms of the notice that the defendant was exercising his option to continue as a tenant on the same terms and conditions. We fail to find any terms in the Money Order coupon from which the exercise of option could be spelt out. Further it is also necessary that the notice in writing should be served on the landlord. Rule 11 read with Rule 9 provides that a notice may be served either in person or by sending a notice by registered post acknowledgment due. In this case, no notice was sent by registered post acknowledgment due. It was sought to be argued that the notice in writing contained in the Money Order coupon was served in person oh the plaintiff, as the plaintiff saw the Money Order coupon before refusing to accept the Money Order. The Court below has also held that the plaintiff was shown the Money Order coupon on the strength of the evidence of D.W. 4. But on a perusal of the evidence of D.W. 4, we do not see any statement by him that the Money Order coupon was shown to the plaintiff. All that D.W. 4. stated was that the plaintiff appeared before him and requested two day''s time to consult his advocate when be was informed that there was a Money Order for Rs. 200/-. He again appeared after two days and refused to receive the Money Order. Nowhere in the deposition of D.W. 4 we find a statement that the coupon was shown to the plaintiff or that the plaintiff looked into the coupon. In the circumstances, the finding that the plaintiff saw the Money Order coupon and therefore it must be taken that the notice contained in the coupon was served on him.

17. Sri Ramakrishna Raju further argued that if a notice was sent by registered post acknowledgment due, under Rule 11, the mere sending of that notice would constitute service of the notice in writing. He submitted that the Money, Order coupon stands in the same position or perhaps eves in it better position than a registered post-acknowledgment due. He, therefore argued that the more sending of the Money Order coupon would constitute service within the meaning of Rules 9 and 11. Unfortunately the Rules do not refer to service of a notice by

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means of a Money Order coupon and we do not see any reason to extend the anology of registered post acknowledgment due, to a Money Order coupon. In these circumstances we are of the view that the matter contained in the Money Order coupon does not constitute the notice to exercise the option to continue as a tenant as required by Section 12, nor was it served on the plaintiff. We, therefore, held that the defendant cannot be held to continue as a tenant. After the expiry of three months from the date of the death of his lather within which he did not exercise his option, the defendant would be in the position of a trespasser. The Plaintiff is therefore entitled to ask for his eviction.

18. Reliance was placed by the learned counsel for the respondent on the decision of Sheth, J. In V, Veerabhadramma vs. P. Ramaiah 1977-(1) An. WR 420=1977 ALT 69 (NRC). In that case after the death of the tenant, within two months, the rent due for the previous fasli, was sent. After receiving the amount under the Money Order, the landlord did not take any action whatever for one full year, during which the defendants continued to be tenants in respect of the land in question. After the expiry of one year, another Money Order for the amount of rent due was sent by the representatives of the deceased tenant but it was refused. It was held that the remittance by the defendants of the rent by money order, its acceptance by the plaintiff, the omission on the part of the plaintiff for one year to take any action to evict the defendants from the land in question and the remittance by the defendants of another rent, were all circumstances sufficient to satisfy the requirements of Section 12 of the Act and they constitute the notice in writing by which the defendants expressed their intention to exercise their option. With respect, we are unable to agree with the view expressed in this decision. The mere sending of the rent already due by Money Order, cannot in our opinion, constitute a notice in writing exercising the option to continue as the tenant u/s 12. Further in the said case, it was pointed out that the plaintiff did not take any action whatsoever for one full year during which the defendants continued to cultivate the lands. We fail to see bow this circumstance also can be taken into account in coming to the conclusion whether a notice in writing exercising the option as required by Section 12 has been given or not. If the sending of the Money Order by itself cannot constitute a notice in writing within meaning of Section 12, it cannot be converted into such a notice by the mere fact that the plaintiff allowed the defendants to continue in possession of the land for a period of one year without taking any action. The third circumstance pointed out by the learned Judge, viz., the remittance of a further sum for the succeeding year which was refused by the plaintiff, is not in any way relevant in considering the question whether there was a notice in writing exercising the option. It is true that the Andhra Tenancy Act was enacted primarily with the object of protecting the tenants of agricultural lands from eviction. But on a perusal of the various provisions of the Act, it is seen that this protection was sought to be limited primarily to the cultivating tenant. The expression "cultivating tenant" is defined u/s 2 (c) as meaning "a person who cultivates by his own labour or by that of any member of his family or by hired

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labour under his supervision and control any land belonging to another under a tenancy agreement, express or implied, but does not include a mere intermediary. It is seen that this expression does not take in the heirs or assignees or legal representatives or the cultivating tenant. On the other hand under Sec. 2 (f) the definition of "landlord" includes the heirs, assignees, legal representatives of such landlord or person deriving rights through him The legislature obviously intended that the protection afforded to a cultivating tenant should not be available to the heirs, assignees or legal representatives, except to a limited extent as provided u/s 12. AS has been observed already, it is provided by that section that if a cultivating tenant dies, his widow and lineal heirs would have the option continue the tenancy for the unexpired portion of the lease, provided, such option is exercised by serving a notice in writing on the landlord within a period of three months from the date of the demise of the cultivating tenant. The right to continue as tenants by the widow and the lineal heirs is subject to the condition that they exercise the option in the manner referred to in that section We cannot construe the requirement of option to be exercised by serving a notice in writing within a period of three months as merely directory. It is true that section does not provide the form in which the notice should be couched as long as there is a notice in writing and the contents of the notice make it clear that the widow or the lineal heirs nave exercised the option, it does not matter that the notice is not in any prescribed form. To that extent it is sufficient if there is substantial compliance with the requirements of the Section. But that is not the same thing as saying that even when there is no notice in writing which is served on the landlord within a period of three months, that amounts only to an irregularity, on the ground that the requirements are only directory and not mandatory.

19. It was also sought to be argued on behalf of the plaintiff that the notice in writing should be by all the lineal heirs as required by sec. 12 and in as much as the notice in this case was given only by one of the lineal heirs, viz., the defendant, the requirements of the Section are not satisfied. It is unnecessary for us to consider that question, as we have come to the conclusion that the contents of the Money Order coupon did not constitute a notice in writing. It was also argued that the option to continue as a tenant is a right given only to the widow and lineal heirs and not to a legatee. It is unnecessary to consider this question also, as firstly, the defendant apart from being a legatee is also a lineal heir and secondly we have come to the conclusion that the contents of the Money Order coupon do not constitute a notice in writing as required by Section 12 and it was not served upon the plaintiff as required by Rules 9 and 11.

20. For all these reasons, we are of the view that the decision of the Court below on this aspect is not right and the plaintiff is entitled to have the defendant evicted and possession delivered to him.

21. The next question for consideration is as regards the quantum of mesne profits. As we have come to the conclusion that the possession of the defendant

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was that of a trespasser after the expiry of the three months period from the death of Kutumbareddi, the plaintiff will be entitled to mesne profits and not merely rent. The case of the plaintiff is that sugarcane, turmeric and other valuable crops can be raised on this land and the mesne profits may be fixed at Rs. 1400/- per acre per year. On the other hand the defendant''s case is that the land is situate in a high level and has no irrigational facilities and sugarcane cannot be grown on the land at all, that he has been growing pillipesara or green-gram and at the most the mesne profits could be fixed at Rs. 200/- per year for the entire land. Oral evidence was lot in on the side of the plaintiffs to say that such lands are being leased out approximately at Rs. 1400/- per acre per year. The court below has, in our view, rightly not placed reliance on the oral evidence of either side as it found the evidence to be interested and unreliable. We have ourselves gone through the evidence. We agree with the Court below that there is considerable exaggeration on either side, but the following facts seem to be dear. From the Adangals produced by the plaintiff, it appears that even the defendant''s father during his life-time was raising sugar-cane on the lands. It is true that the defendant has been raising only Pillipesara, but in considering the mesne profits payable to the plaintiff from a person who is in the position of a trespasser, it is well settled that the mesne profits have to be computed not on the basis of what the trespasser had actually realised from the lands but what ought to have been realised by an ordinary prudent cultivator. We have therefore to proceed on the footing that the land is in which sugarcane can be raised, as the defendant''s father himself was raising sugar-cane. At the same time it is seen that there are no irrigational facilities for the land, which is in a higher level and water has to be bailed into the suit land by "Guda". This would naturally involve considerable labour and expenses. One of the defendants witnesses no doubt admitted in the evidence that if sugar-cane is raised, it would yield Rs. 1000/- per acre, but obviously be was referring to the lands in which, in the ordinary course, without extra effort, sugar-cane crop could be raised. D.W. 2 also stated that Rs. 800/- would be the reasonable rent. It is also to be noted that they were giving evidence in the year 1976. Having regard to all these circumstances, we consider it reasonable to fix the mesne profits at Rs. 500/- per acre per year. The plaintiff will be entitled to mesne profits at this rate for the throe years prior to the suit and also after the suit. In the result, A.S. No. 500/77 is allowed to the extent indicated above and A.S. No. 363/77 is dismissed. Parties will bear their costs here and in the Court below. The amount of mesne profits due for each year will carry interest at 5? p.a. from 1st of April of the succeeding year. The rents already deposited together with counter interest thereon, will be given credit to.

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