
(2010) 03 AP CK 0012
In the Andhra Pradesh High Court
Case No : C.R.P. No. 6304 of 2006

Karaka Varahamma and Another	Vs	APPELLANT
Velagala Simhachalam and Others		RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 12(1), Order 9 Rule 13, 151, 2(12)
Constitution of India, 1950 — Article 227

Citation : (2010) 3 ALD 725 : (2010) 6 ALT 268

Hon'ble Judges : B. Seshasayana Reddy, J

Bench : Single Bench

Advocate : Venkateswara Rao Gudapati, for the Appellant; Jayanti and S.C. Sekhar, for the Respondent

Final Decision : Dismissed

Judgement

B. Seshasayana Reddy, J.—This Civil Revision Petition is directed against the order dated 21.06.2006 passed in I.A. No. 309 of 2004 in O.S. No. 71 of 1981 on the file of the Junior Civil Judge, Kothavalasa, whereby and whereunder the learned Junior Civil Judge over-ruled the objections raised by the judgment debtors and appointed Sri T. Shivaji, Advocate as Commissioner for determination of mesne profits as per the decree.

2. Background facts in a nutshell leading to filing of this revision by the 1st Petitioner/ 2nd Defendant in O.S. No. 71 of 1981 are: Karaka Suri along with 4 others filed the suit for declaration of title, recovery of possession and mesne profits against Karaka Varahamma and Velagala Yerrayamma in respect of suit schedule property. The suit came to be decreed on 20.07.1988 declaring that Velagala Simhachalam-2nd Plaintiff is owner of the suit schedule property and that she is entitled to recover vacant possession of the same and also to mesne profits. The Defendants filed a petition under Order 9, Rule 13 Code of CPC to set aside the ex parte decree dated 20.07.1988 passed in O.S. No. 71 of 1981. They

also moved I.A. No. 762 of 1992 in O.S. No. 71 of 1981 to condone the delay of 336 days in filing the petition to set aside the ex parte decree. Their application ended in dismissal on 28.06.1993. They assailed the order dated 28.06.1993 passed in I.A. No. 762 of 1992 in O.S. No. 71 of 1981 by filing CRP No. 2202 of 2000. The said revision ended in dismissal on 25.07.2000. Velagala Simhachalam/2nd Plaintiff filed I.A. No. 309 of 2004 under Order 20, Rule 12 r/w. Section 151 Code of CPC seeking appointment of an Advocate-Commissioner to determine the future profits from the date of suit to the date of delivery of the suit schedule property to them. The Defendants filed counter resisting the application. Para.3 of the counter reads as hereunder:

3. The J. Drs submit that in the above E.P. No. 35/04, counter is filed, heard on both sides and this Honourable court is pleased to dismiss the above E.P., since it is barred by limitation. Moreover there is no appeal against the said order of this Honourable court so far. Since the above E.P. is dismissed by this Honourable court, the above petition for appointment of court commissioner is also to be closed by this Honourable court. There is no use in hearing the above petition. Knowing fully well about all these facts, the D. Hr. has been pressing for the above E.A. to appoint a court commissioner. It is nothing but making inconvenience to the valuable time of this Honourable Court.

The learned Junior Civil Judge, on considering" the material brought on record and on hearing the counsel appearing for the parties, over-ruled the objections raised by the Defendants/judgment debtors and appointed Sri T. Sivaji, Advocate Commissioner for determining the mesne profits, by order dated 21.06.2006. The said order is assailed in this revision.

3. The CRP came to be admitted on 17.01.2007. The 1st Respondent entered appearance through a counsel.

4. Heard learned Counsel appearing for the Petitioners/judgment debtors and learned Counsel appearing for the 1st Respondent/decreed holder.

5. Learned Counsel appearing for the Petitioners/judgment debtors submits that once E.P. No. 35 of 2004 filed by the decree holders seeking delivery of possession is dismissed, question of appointing Advocate Commissioner to ascertain the mesne profits does not arise. In a way, his submission is, once the decree has become unenforceable by lapse of period of limitation, no further proceedings could be taken up pursuant to the said decree. In support of his submission, reliance has been placed on the decision of the Supreme Court in *Lucy Kochuvareed v. P. Mariappa Gounder* and vice verse (1) AIR 1979 SC 1214.

6. It is profitable to refer paras 24 to 26 of the cited decision, which read as hereunder:

24. Mesne profits being in the nature of damages, no invariable rule governing their award and assessment in every case, can be laid down and "the Court may mould it according to the justice of the case". Even so, one broad basic principle

governing the liability for mesne profits is discernible from Section 2(12) of the Code of CPC which defines "mesne profits" to mean "those profits which the person in wrongful possession of property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession". From a plain reading of this definition, it is clear that wrongful possession of the Defendant is the very essence of a claim for mesne profits and the very foundation of the Defendant's liability therefor. As a rule, therefore, liability to pay mesne profits goes with actual possession of the land. That is to say, generally, the person in wrongful possession and enjoyment of the Immovable property is liable for mesne profits. But, where the Plaintiff's dispossession, or, his being kept out of possession can be regarded as a joint or concerted act of several persons, each of them who participates in the commission of that act would be liable for mesne profits even though he was not in actual possession and the profits were received not by him but by some of his confederates.

25. In such a case where the claim for mesne profits is against several trespassers who combined to keep the Plaintiff out of possession, it is open to the Court to adopt either of the two courses: It may by its decree hold all such trespassers jointly and severally liable for mesne profits, leaving them to have their respective rights adjusted in a separate suit for contribution; or, it may, if there is proper material before it, ascertain and apportion the liability of each of them on a proper application made by the Defendant during the same proceedings.

26. Another principle, recognised by this Court in *Chitturi Subbanna v. Kudapa Subbanna* is that a decree under Order 20, Rule 12 of the Code, directing enquiry into mesne profits, howsoever expressed, must be construed to be a decree directing the enquiry in conformity with the requirements of Rule 12(1)(c), so that the decree-holder is not entitled to mesne profits for a period (commencing from the date of the institution of the suit) extending beyond three years from the date of the preliminary decree.

7. Learned Counsel appearing for the 1st Respondent/decreed holder submits that there is no period of limitation for moving an application under Order 20, Rule 12 Code of CPC and therefore, the order impugned in the revision is legal and proper and the same is not required to be interfered by this Court in exercise of powers under Article 227 of the Constitution of India. In support of his submissions, reliance has been placed on the decisions of the Madras High Court in *Ramasubramanya Pattar Vs. Karimbil Pati and Others*, and *Chandrakantam v. Chandramowliprasada Rao* (3) AIR 1949 Mad 134; and the decision of this Court in CRP No. 2327 of 1982, dated 23.12.1982 (*In Reddy China Sattemma and Ors. v. Hanumanth* 1983 (1) ALT 37 avajjula Surayanarayana (died) per L.Rs. and Ors.) (4) (NRC).

8. Order 20, Rule 12 Code of CPC reads as hereunder:

(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

(b-a) for the mesne profits or directing an enquiry 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.

9. The issue that fell for consideration in CRP No. 2327 of 1982 (4 supra) was; Whether there is any period of limitation for filing application under Order 20, Rule 12(1)[c] Code of Civil Procedure? The issue came to be answered as hereunder:

It is thus well settled position of law that when a preliminary decree has been passed and a direction therein has been given to ascertain mesne profits, it is not incumbent for the decree-holder to file an application to ascertain mesne profits. When he files an application, it is only a reminder to the Court to take steps to pass final decree and ascertainment of mesne profits is one such step in that direction. Therefore, the period of limitation has no application to the application filed under Order 20, Rule 12(1)[c]. Thus, the contention raised by the Petitioners that the application is barred by limitation, is without any substance and accordingly, it is rejected.

In view of the proposition of law laid down by this Court in the above referred case, the contention of the Petitioners that the application moved by the 1st Respondent/ decree holder under Order 20 , Rule 12 Code of CPC for ascertainment of mesne profits has no merit. The trial Court considered this aspect in right perspective and proceeded to overrule the objection of the judgment debtors, who are the Petitioners herein, and appointed an advocate commissioner to ascertain the mesne profits.

10. Accordingly, the Civil Revision Petition fails and it is hereby dismissed. No costs.