

(1958) 06 AP CK 0012

In the Andhra Pradesh High Court

Case No : A.A.A.O. No"s. 11 and 12 of 1955

Poluru Ranga Rao and Others

APPELLANT

Vs

Koppolu Ramadoss and Others

RESPONDENT

Date of Decision : 30-06-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 15, 144, 2(12)

Citation : AIR 1959 AP 182

Hon'ble Judges : P. Chandra Reddy, C.J.;Munikanniah, J

Bench : Division Bench

Advocate : O. Chinnappa Reddy, K. Venkateswara Rao and P. Ramakrishna, in C.M.S.A. 11/55 and P.V. Chalapati Rao, in C.M.S.A. 12/55, for the Appellant; O. Chinnappa Reddy, K. Venkateswara Rao and P. Ramakrishna, in C.M.S.A. 12/55, V. Parthasarathi, P.V. Chalapati Rao and N. Rajeswara Rao, in C.M.S.A. 11/55, for the Respondent

Final Decision : Dismissed

Judgement

1. The controversy that has arisen in these appeals has to be answered with reference to Sections 144 and 2(12) of the Civil Procedure Code. The matter came up before our learned brother, Umamaheswaram J., and he referred it to a Bench as the value of the properties, which are the subject-matter of these appeals, is more than Rs. 10,000/-.

(2) The question arises in the following circumstances :

The trustees of the temple of Sri Chennakesava-swamy of Polur village, Guntur district, instituted O. S. No. 5 of 1940 in the Court of the Subordinate Judge, Tenali, for recovering possession of 13 acres of inam dry land, alleging that the property was originally attached to Devadasi service and on the abolition of the service, it reverted to the temple. The alienees from the Devadasis were the defendants in the suit. The trial Court decreed the suit and in execution proceedings the trustees entered possession on 7-4-1946.

The decree was confirmed by the lower appellate Court; but on Second Appeal, the High Court reversed the judgment of the Courts below and dismissed the suit. After the second appeal was allowed, the defendants obtained re-delivery of the land on 29-7-1951. Thereafter, they filed the petition which has given rise to these appeals, for mesne profits for the period during which they were out of possession, i.e., from 7-4-1946 to 29-7-1951.

3. The basis adopted by them for calculation of mesne profits was what they themselves would have realised if the lands were personally cultivated. This position was contested by the trustees who maintained that the basis should be the actual rents realised from the tenants or what would have been got with due diligence. It was also submitted that since they did not realise rents for one year from the tenants, they should not be made liable for rents in regard to that year.

4. The trial Court accepted the contention of the trustees as regards the basis of calculation but rejected it in respect of the rent for the year 1947-48, which, according to the trustees, could not be got in spite of due diligence. This was affirmed by the lower appellate Court.

5. Both the parties, having been aggrieved by this decision, have preferred the appeals to the extent it is against each of them. The appeal preferred by the trustees is C.M.S.A. No. 11 of 1955 and that of the defendants is C.M.S.A. No. 12 of 1955. We will first take up C.M.S.A. No. 11 of 1955 as it could be disposed of easily.

6. The lands in dispute were leased out by the trustees in open auction for the years 1946 to 1949, and the highest bidder happened to be one Basava-chari. He paid the rent for the year 1946-47 but failed to pay the rent for the year 1947-48. So the trustees took possession of the same and leased them out to third parties. Basavachari was subsequently adjudged an insolvent and the trustees could not get anything in the insolvency proceedings, obviously for the reason that there were no assets out of which the debts could be met.

The stand taken by the appellants (trustees) was that since they could be liable only for what they had received and it was not in dispute that nothing was got by them from the tenant for that year they could not be made answerable for the rent for that period. We do not think that we could give any weight to this contention for the reason that with due diligence they could have avoided this loss, that is, by requiring security from the lessee. Had they insisted upon this, the rent could have been made good out of the security. This position is not seriously challenged on behalf of the appellants. It follows that the judgment of the Court below on this aspect of the matter is correct and cannot be successfully impeached.

7. In the result, the appeal fails and is dismissed with costs.

8. C.M.S.A. No. 12 of 1955 The contention pressed upon us by Sri Rajeswara Rao in support of this appeal is that the appellants are entitled to recover from the

trustees not only what they have actually realised or that would have been realised with due diligence but what his clients might have realised had they personally cultivated the lands. According to the learned counsel, this result flows from the language of Section 144 of the CPC and also from certain decisions of the Madras High Court and of the Supreme Court.

9. Section 144 of the CPC enacts :

"(1) Where and in so far as a decree or an order is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed; and for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal."

What is argued, and with great insistence, by Sri Rajeswara Rao is that the clause "the position which they would have occupied" means the position in which the parties would have been had they cultivated the lands without their possession being disturbed. It is maintained that the appellants should not be put to loss by reason of an order of the Court and that there is no reason why they should be deprived of the full benefit of their cultivation which would have been the case if they had not been dispossessed by the trustees.

In support of this proposition, he seeks to place reliance on the dictum of Cairns, L. C., in *Rodger v. Comptoir d'Escompte de Paris*, (1871) LR 3 PC 465 at p. 475, extracted with approval by the Privy Council in AIR 1922 PC 269f) :

"One of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors and when the expression the "act of the Court", is used, it does not mean merely that act of the primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case."

10. We are unable to derive any assistance from these remarks. It is true that no suitor should suffer from an act of Court, but there is no question of any suitor suffering here by any decree or order of any Court. The remedy for a suitor, who seeks restitution, is provided in Section 144 of the Civil Procedure Code, whereunder a Court, while ordering restitution, could pass any order, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal. Hence, adequate provision is made in Section 144 for setting right any wrong that might have been done to a suitor as a result of an order or decree passed by a Court.

11. The contention pressed upon us by Sri Rajeswara Rao is that the words

"place the parties in the position which they would have occupied" and also the expression "damages, compensation employed in the latter part of the section, strongly support his submission. He calls in aid the observations of Leach, C. J., who spoke for the Court in Ponnappalli Venkatappayya and Another Vs. Pushadapu Ramaswami and Others, ; Budiredla Ramamurti Vs. Matta Sitaramayya, . The passage pressed into service in the judgment is :

"As already indicated, the tenants are merely entitled to recover the value of that part of the produce of the land which would have been theirs had they been allowed to remain in possession."

12. We fail to see how these observations can render any assistance to the appellants. There, the tenants obtained restitution of the properties in dispute with mesne profits from the landlord after they succeeded in the Privy Council, They claimed that the mesne profits should consist of the whole of the produce which the landlord realised by cultivating the lands. On the other hand, the landlord raised the contention that he should be allowed credit, in the calculation of mesne profits, for the rent on the property which would have been due to him for the period if the tenants had remained in possession.

In the Courts below, this contention was negatived because of a judgment of a Bench of the Madras High Court in Lakshmi Narasimha Rao v. Seetharamaswami, 3 M LW 405 : (AIR 1917 Mad 314). King, J. before whom the second appeal came up for hearing, felt that the rule stated in 3 Mad LW 405: (AIR 1917 Mad 314), was not correct as it was not based upon any logical principle and also for the reason that it was opposed to a judgment of the Calcutta High Court in Maharaja Bahadur Sir P.C. Tagore, Kt. Vs. Mathura Kanta Das, , and referred it to a Full Bench.

13. In 3 Mad LW 405: (AIR-1917 Mad 314), Sadasiva Aiyar and Noore, JJ,, held that tenants who had been dispossessed of a parcel of land consequent on the proceedings started by the land-holder, could get mesne profits of the land for the period for which they were out of possession without any deduction of rent. It was in overruling that decision that the remarks relied upon by the counsel for the appellants, and extracted above, were made. It is useful to refer to the whole passage of which this is only a part :

"The basis of this decision was that the expression "mesne profits" meant "those profits which the person in wrongful possession of such property actually received." The learned Judges, however, overlooked the real position. The tenants were only entitled to restitution and therefore they were merely entitled to be put in the position which they would have been in had they been enjoying the Kudiwaram right throughout the period of dispossession.

The value of the Kudiwaram right is represented by the net value of the produce, less the portion which must be delivered to the land-holder as the holder of the Melwaram right. It is not a matter of awarding of mesne profits in the sense ordinarily meant. As already indicated the tenants are merely entitled to recover

the value of that part of the produce of the land which would have been theirs had they been allowed to remain in possession."

14. These observations should be understood in the context in which they were made. It was an extreme position taken by the tenants based upon 3 M LW 405: (AIR 1917 Mad 314), that they should get the whole produce representing both the kudiwaram and melwaram, which would not have been the case had they continued in possession. If they were not dispossessed, they had to pay the rents representing the melwaram and could not be in a better position merely because the landlord obtained possession by virtue of a decree of the Court. It is in that situation that those remarks were made by the learned Judges.

15. 44 M LJ 735: (AIR 1922 PC 269) also does not carry the appellants anywhere. No point of the basis of calculation for ascertaining mesne profits has arisen in that case. In the course of the discussion the learned Judges merely referred to Section 144 of the Civil Procedure Code. That does not throw any light on the present enquiry. Nor is Lal Bhagwant Singh Vs. Rai Sahib Lala Sri Kishen Das, of any help to the appellants as what is stated above applies to this. So these decisions do not afford any analogy. The problem has to be solved mainly with reference to the language of that section.

16. All that the earlier part of the section which says "cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or order or such part thereof as has been varied or reversed" connotes is that the property should be restored more or less in the same position in which it was at the time at which the party seeking restitution was dispossessed. To take an obvious example, there might have been a number of trees at the time of dispossession.

A person making the restitution should restore the property in the same position, that is, with the trees that were standing thereon. If they were denuded, surely the successful person is entitled to compensation for the loss of the trees. Again supposing subsequent to the dispossession, some pits were dug since the restitution of the property should be made in the same position in which it was at the relevant time the party seeking restitution is entitled to damages. The expression "damages, compensation" should be understood only in that sense and not as contended by Sri Rajeswara Rao that, for purposes of calculating mesne profits in the case of restitution, damages and compensation must be added to mesne profits.

17. The expression "mesne profits" has been defined in Section 2(12) of the Code.

" "Mesne Profits" of property means those profits which the person in wrongful possession of such 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."

It is now well settled that the criterion for calculation of mesne profits cannot be what the person out of possession might have got had he been on the land, Mesne profits could only consist of what the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom. If citation is needed, reference may be made to *Gurudas Kundu v. Hemendra Kumar*, AIR 1929 PC 300 and AIR 1930 82 (Privy Council)

18. While not disputing this, what Sri Rajeswara Rao urges is that the expression "mesne profits", as used in Section 144, has a different connotation from that in Section 2(12) of the Code. We find it difficult to accept this proposition. The same expression used in an enactment has the same meaning unless it is clear from the context that a different meaning was intended to be given by the Legislature. Therefore, we see no reason why we should depart from the ordinary rule of construction of statutes in construing Section 144.

That apart, the language employed in Section 144, makes it abundantly clear that the party dispossessed could only get mesne profits for the period during which he was out of possession when he gets restitution. If the contention of the appellants were to be accepted, it would result in uncertainty and vagueness as it is difficult to postulate what the person dispossessed might have got had he been in possession of the property.

19. There is an authority of the Calcutta High Court for the view we have taken, in *Surendra Lal Chowdhury and Others Vs. Sultan Ahmed and Others*, In that case, in a similar situation, a Division Bench of that High Court consisting of Mukerji Ag. C. J. and Ghose, J. ruled that in restitution, the successful party could obtain only mesne profits as understood in Section 2(12) of the Code. The learned Judges also observed :

"But in assessing what a party may have lost or what he may have been deprived during his dispossession, the law takes into account not what he could have made but what his opponent did in fact make or could with reasonable diligence have made. At first sight this might seem somewhat unjust, but it is not really so, for what the party out of possession could have made if he was left in possession, is a loss which in the vast majority of cases would be hypothetical, remote and uncertain."

With respect, this represents the correct position in law and we are in entire agreement with it.

20. In AIR 1948 178 (Privy Council) under the restitution proceedings initiated u/s 144 of the Civil Procedure Code, the successful party was awarded by the Subordinate Judge; damages suffered by the execution of the decree before it was reversed on appeal, a sum of money equivalent to that which was deposited by him and also mesne profits and possession of the properties in dispute.

This is what their Lordships say with regard to mesne profits :

"The learned Subordinate Judge allowed almost the full amount of the arrears of

rent claimed by the appellant from each of the tenants who were in occupation of the shops. The learned Judges of the High Court reduced the amount by decreeing only the sum actually received by Paira Mal. Their Lordships are not satisfied that any principle has been disregarded by the High Court in deciding the question. In the circumstances of the case, their Lordships think that the appellant is not entitled to get more than the sums actually realised from the tenants."

In our opinion this passage answers the contention raised on behalf of the appellants. No decision which has taken a contrary view has been placed before us. It follows that the appellants were only entitled to the rents actually received by the trustees or what they would have received with due diligence.

21. In the result, the judgment under appeal is affirmed and the appeal dismissed with costs.