

(1977) 03 PAT CK 0001
In the Patna High Court
Case No : A.F.A.D. No. 147 of 1973

Rajdeo Pandey and Others

APPELLANT

Vs

Rijhan Pandey and Others

RESPONDENT

Date of Decision : 16-03-1977

Acts Referred:

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

Citation : AIR 1977 Patna 245 : (1978) 26 BLJR 189

Hon'ble Judges : B.P. Jha, J

Bench : Single Bench

Advocate : Ashwini Kumar Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

B.P. Jha, J.—The present appeal arises out of a proceeding for determination of the mesne profit for the years 1949 to 1964.

2. Plaintiffs brought a suit for declaration of their title and recovery of possession in respect of the suit properties as well as for mesne profit. The suit was dismissed by the trial Court, in appeal, the suit was decreed with costs by the lower appellate Court. In second appeal as well as in letters patent appeal, the High Court affirmed the judgment of the lower appellate Court. After the decree of the High Court, plaintiffs filed a petition for determination of the mesne profit for the years 1949 to 1964.

3. The short point for consideration is: If the decree does not mention expressly about the mesne profit, can the court determine the mesne profit under Order XX, Rule 12 of the Code of Civil Procedure?

In my opinion, if the decree does not expressly mention about the mesne profit, the court subsequently cannot deal with the determination of the mesne profit because the decree is expressly silent on the point of mesne profit. This view is being supported by a decision of the Privy Council in the case of Fakharuddin Mohamed Ahsan Chowdhry v. Official Trustee of Bengal (1880) 8 Ind App

197(PC). Their Lordships held at p. 207 as follows:--

"..... where a decree is silent on the subject of interest or of wasilat, interest or wasilat cannot be added in the course of execution. But here the decree is not silent on the subject of wasilat." Relying on the decision of the Privy Council, I hold that the petition filed by the plaintiffs for determination of the future mesne profit under Order XX, Rule 12 of the CPC is not maintainable on the ground that the decree did not expressly disclose that the decree for mesne profit was passed in favour of the plaintiffs. In the present case, a decree for recovery of possession in respect of the suit properties with costs was passed in favour of the plaintiffs. Although the plaintiffs prayed for passing a decree for mesne profit, neither the lower appellate court nor the High Court passed any decree in respect of the mesne profit. In these circumstances, I hold that the plaintiffs could not file a petition for determination of the mesne profit under Order XX, Rule 12 of the CPC for the simple reason that the decree is silent on the point of mesne profit. This view has also been expressed by this Court in the case of Munshi Banesh Prasad and Others Vs. Jalpa Shankar Varma and Others, and this decision applies to the facts of this case.

4. Learned counsel for the appellants relied on a decision of the Orissa High Court in Satrughna Sabata and Another Vs. Sridhari Sabata and Others, . In my opinion, the case of the Orissa High Court does not apply to the facts of the present case. In Orissa case, it was held as follows:--

"In this case, the decree does not give such express direction in accordance with the terms of Order 20, Rule 12 (1) (c) (i) though the decree grants future mesne profits."

The learned Judge of the Orissa High Court was of the opinion that a petition for determination of the mesne profit will be maintainable even if no express direction has been made in accordance with Order XX, Rule 12 (1) (c) (i) of the CPC though the decree grants future mesne profit. In other words, his Lordship was of the opinion that in a case where a decree for mesne profit was granted, but Specific direction in accordance with Order XX, Rule 12 (1) (c) (i) was not given by the court, the petition will be maintainable for determination of the mesne profit In the present case, no decree was passed for mesne profit and hence no petition will be maintainable by the plaintiffs for determination of the mesne profit.

5. In the result, the appeal Is dismissed. The parties will bear their own costs throughout