

(1978) 03 BOM CK 0024
In the Bombay High Court
Case No : Second Appeal No. 789 of 1974

Sadabai and Another

APPELLANT

Vs

A. Nivrutti Vithoba Takale and Others

RESPONDENT

Date of Decision : 14-03-1978

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 20 Rule 12, Order 20 Rule 12(1)

Citation : AIR 1979 Bom 29 : (1978) 80 BOMLR 422 : (1979) MhLj 55

Hon'ble Judges : Vaidya, J

Bench : Single Bench

Advocate : M.L. Apte, for M.L. Dudhat, for the Appellant; V.V. Divekar, for the Respondent

Final Decision : Allowed

Judgement

1. The short point arising in the above second Appeal, is whether the appellants-decree-holders were entitled to recover mesne profits from the date of the suit (April 25, 1957) to the date of the decree (March 28, 1963), which was negatived by the IIInd Extra Assistant Judge, Ahmednagar, on January 15, 1974, confirming an order passed by the Civil Judge, Junior Division, Karjat, on July 8, 1971, in Miscellaneous Application No. 1 of 1967, filed by the appellants for determining the mesne profits under the decree.

2. The two Courts below purported to follow the decision of the Supreme Court in Chitturi Subbanna Vs. Kudapa Subbanna and Others, where it was laid down that Order 20, Rule 12, does not empower a Court to direct an enquiry and pass a final decree with respect to mesne profits for a period exceeding three years from the date of decree.

3. The Rule was thereafter amended by this Court on November 1, 1966; and Order 20, Rule 12, so far as this Court is concerned, reads as follows :--

"12. Decree for possession and mesne profits :--

(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 rent or mesne profits which have accrued on the property during the period prior to the institution of the suit, or directing an enquiry as to such rent or mesne profits;

(c) directing an enquiry as to rent or mesne profits from the institution of the suit until--(i) the delivery of possession to the decree-holder, or (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court.

(2) Where an inquiry is directed under Clause (b) or Clause (c) of Sub-rule (1) above, a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry." It is clear in the Rule as amended, there is; no restriction of three years, which was to found in the earlier Order 20 Rule 12 (1) (c) (iii).

4. The rule is only a procedural rule and must be held to be in force retrospectively. Both the Courts below erred in law in not awarding mesne profits at the rate of Rupees 1000/- per year from April 25, 1957, to March 28, 1963. It was urged on behalf of the judgment-debtors that as the rule was enacted by this Court subsequent to the decree, the two Courts awarded in accordance with the interpretation of the Supreme Court and hence, it cannot be said that the two Courts erred in law. It was submitted that the rule was not merely a procedural rule but was enacted to enlarge the rights of the decree-holders, and therefore, it cannot be given retrospective effect.

5. The contention must be rejected because the power of the executing Court, which is regulated by Order 20 Rule 12, is a matter of merely procedural power, in the execution of the decree which is passed. The decree had already vested the rights in the decree-holders. Moreover, the High Court had the rule making power to amend the rule and even amend it retrospectively notwithstanding the decision of the Supreme Court, while interpreting the unamended rule.

6. Once that power of amendment was exercised by the High Court, the amended rule must be interpreted and applied; and it must be held that the High Court was conscious that the Executing Courts will be Executing decrees which were passed earlier than when the rule was enacted; and the High Court intended to vest these powers in the executing Courts to prevent unnecessary litigation about the same. In my opinion, therefore, the lower Courts erred in not giving retrospective effect to the amendment made by the High Court in Order 20 Rule 12.

7. It was then urged} on behalf of the judgment-debtors-respondents, that the decree in the present case did not award specifically mesne profits from the date of the suit; and that the decree had merely awarded mesne profits from the date

of the decree as it refers to only ^iq<hy njE;kups mRiUukckcrph pkSd"kh----**

This interpretation of the decree was not made on behalf of the judgment-debtors in the two Courts below and is being made for the first time here. It is crystal clear from the words ^iq<hy njE;kups mRiUu ckcrph pkSd"kh]

that what was meant was the future mesne profits from the date of the suit. The plaintiff itself asked for mesne profits without mentioning whether it was past or future and the decree directed future mesne profits which necessarily means from the date of the suit. The contention that it means only from the date of the decree is, therefore, rejected.

8. In the result, the order passed by the 2nd Extra Assistant Judge, Ahmednagar on January 15, 1974, is further modified by directing that the judgment-debtor shall pay Rs. 1,000/- per year from 1957 to 1963, i.e. in all Rs. 6,000/- more than what has been awarded by the lower Courts for the future mesne profits.

9. The Second Appeal is accordingly allowed with costs.

10. Appeal allowed