

(1939) 03 MAD CK 0008
In the Madras High Court

Vudaru Pedda Pulla Reddi

APPELLANT

Vs

Peddugari Chinna Venkata Reddi and Others

RESPONDENT

Date of Decision : 17-03-1939

Acts Referred:

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

Citation : AIR 1939 Mad 667 : (1939) 49 LW 652 : (1939) 2 MLJ 356

Hon'ble Judges : Abdur Rahman, J

Bench : Division Bench

Judgement

Abdur Rahman, J.—The question whether the appellants in A.S. No. 37 of 1936 should have been asked to state the amount of future

mesne profits claimed by them and to pay court-fee thereon has come up before me for decision in consequence of a difference between the

Court-Fee Examiner and the learned District Judge of Kurnool.

2. A suit for partition and possession (O.S. No. 203 of 1928) which also included a prayer for the grant of future mesne profits, was instituted by

the plaintiffs in the Court of the District Munsif at Kurnool. It was decided in their favour and a preliminary decree was passed on the 30th July,

1931; but the question of future mesne profits was ordered by the District Munsif to be left open. The property was partitioned and the partition

was followed by a final decree. This was passed on the 15th January, 1932. After the plaintiffs had obtained possession in the execution of this

decree, they applied to the Court on the 30th July, 1934, asking for an enquiry into the future mesne profits and for an order to direct the

defendants to pay what was found to be due from them (E.P. No. 391 of 1932). This application which purported to be under Order 20, Rule 12,

Civil Procedure Code, was opposed by the defendants mainly on the ground that there was no direction for an enquiry into the mesne profits either

in the judgment or in the decree. This contention found favour with the District Munsif and the application was dismissed on the 13th March, 1936.

An appeal was preferred by the plaintiffs against this order to the District Judge on which they affixed a court-fee of one rupee only. The Court-

Fee Examiner objected to this as insufficient as according to him the order passed by the District Munsif on the 13th March, amounted to a

decree, and since the relief claimed in the appeal was unascertainable, he contended that the plaintiffs should be ordered to estimate the amount at

which they valued their relief and to pay an ad valorem court-fee on the figure stated by them. The learned District Judge was of opinion that since

the plaintiffs were asking for future mesne profits only, they could not be required to estimate the relief, the value of which was unknown to them

and the court-fee paid by them was sufficient. The correctness of this order has been questioned before me.

3. It might be mentioned here that the appeal from the order passed by the District Munsif on the 13th March, 1936, was accepted by the learned

District Judge as he was of opinion that the words in the preliminary decree under which the determination of the future mesne profits was left open

must be taken to mean that the matter ""was left open to be agitated in a subsequent enquiry constituting a continuation of the suit"".

4. This order was appealed against and was confirmed by me on the 25th January, 1939, as I found that the Court which had passed the

preliminary decree had not omitted to give a direction in regard to the future mesne profits and that in view of the terms in which the preliminary

decree was passed they could be ascertained by the Court which had passed the decree. The words in the preliminary decree were, to put

differently, taken as being tantamount to a direction for the ascertainment of the future mesne profits and it is only on that basis that I would have to

consider the point which has been raised on behalf of the Government.

5. It has been pointed out in Doraisami Aiyar and Others Vs. T. Subramania Aiyar and Others, that the power of the Court to award future mesne

profits is discretionary. The provision contained in Order 7, Rule 2 refers to mesne profits which have accrued before the institution of the suit.

Section 9 of Madras Act V of 1922 which replaces the second paragraph of Section 11 of the Court-Fees Act provides that no decree

determining the amount of mesne profits falling due after the institution of a suit would be executable until the requisite court-fee is paid on the

amount claimed in execution. It would therefore follow that if the Court had exercised a discretion in the plaintiff's favour and ordered the future

mesne profits to be ascertained, they could not have been required to pay any court-fee until the decree had been passed and they had applied for

execution. The reason behind the rule contained in Section 9 of the Madras Act apparently is that persons asking for future mesne profits were not

considered to be able to estimate the value of their claims firstly because they could not anticipate the rate at which the mesne profits would be

granted by the Court and secondly they could not be aware of the period for which these would be found due and payable. If the plaintiffs could

not be asked to pay a court-fee for the future mesne profits in a suit before a final decree was passed, can they be asked to do so simply because

they had to prefer an appeal, if one lay against the order refusing to hold an enquiry. If the value of the relief asked for in the suit and in the appeal

happens to be the same and it must be so in this case as the plaintiffs' prayer both in the trial and the lower appellate Court was the same, the

court-fee payable in either court would also be the same. Since no court-fee is required as stated above for this relief in the suit, it would appear to

follow that no Court-fee could be required for the same relief for the purposes of the appeal. The inability of the plaintiffs to estimate the mesne

profits continued even at the time when the appeal was preferred by them before the learned District Judge.

6. The lower appellate Court had, in coming to the same conclusion, based its decision on a Division Bench case of this Court given in Kandunni

Nair Vs. Ittunni Raman Nair and Others, . While dealing with the question of future mesne profits, the learned Chief Justice and another learned

Judge of this Court observed as follows:

Where, however a preliminary decree only makes provision for the subsequent determination of the mesne profits, We think that the apt occasion

for requiring a defendant to pay a court-fee in this respect would be, if and when the profits have been determined by a final decree.

7. This observation would cover the case of a plaintiff also who is asking for future mesne profits and seems to conclude the point raised now. It

has been contended on behalf of the Government however, that this does not apply as the plaintiffs had applied for an ascertainment of mesne

profits under Order 20, Rule 12, Civil Procedure Code, and appealed against the order refusing to entertain that application. A reference to this

rule would show that in a suit for the recovery of possession of immovable property when an inquiry as to mesne profits from, the institution of the

suit has been directed at the time when the decree is passed, the Court would have to pass a final decree in accordance with the result of such

enquiry. It has been held already in this case that the Court which passed the preliminary decree in this case must be taken to have directed an

enquiry into future mesne profits. Why should then an application on behalf of the plaintiffs entail the consequence of their having to pay a court-fee

either in the suit or in the appeal? The enquiry although ordered or deemed to have been ordered by the Court has not taken place so far and a

final decree could not therefore have been passed so far as the future mesne profits were concerned in accordance with the result of such enquiry.

The application by the plaintiff under Order 20, Rule 12 must be taken to be a reminder to the Court to do its duty as required by this rule. The

case decided by the Division Bench cannot therefore be distinguished on the ground that the plaintiffs had made an application under Order 20,

Rule 12, Civil Procedure Code.

8. This order rejecting the application does not fall within the definition of a "decree" as defined in Section 2(d) of the CPC and would not

therefore, as alleged by the Court-fee Examiner, amount to a decree. If the plaintiffs could not be forced to estimate the value of the relief for which

they had prayed in the trial Court, they could not have been asked to do so in the appellate Court either. When the trial Court had not done what it

was legally bound to do, the plaintiffs' remedy was to make the application under Order 20, Rule 12 in the first instance and either appeal against

the order or have it revised when this application was dismissed. It would have been a different matter if the trial Court had been found not to have

given any direction for an inquiry into future mesne profits. In that case no order could have been passed for this purpose and the application under

the provisions of this rule would not have been maintainable. The order passed by the first Court cannot in the circumstances be regarded to be even an order having the force of a decree.

9. It would make no difference in my opinion if a final decree in regard to partition had been passed already. The learned Counsel for the plaintiffs

was for that reason inclined to urge that the order passed by the trial Court was in execution. But this contention is incorrect inasmuch as there was

no final decree for mesne profits which could have been executed. An inquiry into future mesne profits had still to be held before the Court could

have been in a position to pass a final decree. The fact that a final decree had been passed in regard to partition does not deprive the Court of the

power of ordering an inquiry into future mesne profits and of a passing a second final decree. The application made by the plaintiffs under Order

20, Rule 12 or an appeal from an order rejecting that application cannot be regarded as having been made in or arising from an order in execution.

10. In view of what has been said, I must find that the appeal, if it was competent - as to which I express no opinion, was rightly valued under

Article 11 of Schedule II of the Court-Fees Act and the order passed by the learned District Judge was correct.