

(1971) 08 AP CK 0015

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 825 of 1970

Waheeduddin

APPELLANT

Vs

Mohamooda Begum and Others

RESPONDENT

Date of Decision : 04-08-1971

Acts Referred:

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

Citation : AIR 1972 AP 126

Hon'ble Judges : Lakshmaiah, J

Bench : Single Bench

Advocate : B.V. Subbarayudu, for the Appellant;

Judgement

Lakshmaiah, J.—This revision u/s 115, Civil P. C. by the 1st defendant is directed against the order and decree dated March 10, 1970 passed by the Sub-ordinate Judge. Nizamabad in I. A. No. 100 of 1969 in O. S. No. 20 of 1964.

2. The above Civil Revision arises from out of a petition filed under O. 20, R. 12 Civil P. C. read with Section 151, Civil P. C. to make an enquiry into the mesne profits of the suit lands and pay the same to the plaintiff as per the directions of the High Court dated August 16, 1966. In the affidavit filed in support of the petition, the plaintiff stated that the preliminary decree pertaining to the suit lands was passed and confirmed by the High Court. While passing the stay order in C. M. P. Nos. 2708 and 6353 of 1966, the High Court directed that an enquiry should be made into the mesne profits payable by the defendants to the plaintiff. The respondents were also directed to deposit half of the mesne profits so ascertained and to furnish security regarding the other half of the profits and the plaintiff was permitted to withdraw the same as to furnishing security. The defendants resisted that petition on the ground that there is nothing in the judgment of the High Court to say that the plaintiff is entitled to mesne profits. In the preliminary decree also, there was no mentioned of any mesne profits being required to be paid by the defendants to plaintiff. Therefore, there cannot be any enquiry about the mesne profits. The question that was posed for being

decided by the court below, under those circumstances. was whether an enquiry should be made into the mesne profits. if so, whether the petitioners are entitled to get the same from the defendants.

3. It was stated in the memo of grounds filed by the petitioner that there was no relief asked for by the plaintiff for mesne profits before the court below and the order passed by the court below directing the appointment of a commissioner is on order passed in I. A. intending to govern the situation till the disposal of the appeal. I am satisfied that where the preliminary decree does not provides for the grant of mesne profits either when no claim towards mesne profits was made or when made if it was rejected, the plaintiff will not be entitled for mesne profits. If he is not entitled, he cannot file an application requesting the court below to appoint a commissioner for the purpose of ascertaining mesne profits. When the preliminary decree does not confer a right upon the plaintiff with respect to mesne profits, the direction contained in the order passed by the High Court pending disposal of the matter before the High Court must be construed as intended merely to govern the situation till the disposal of the appeal. That may not clothe the petitioner with the right. The source of conferred of any right to the plaintiff is the preliminary decree. Under these circumstances, I am satisfied that the court below erred in holding that the enquiry has to be held as regards the mesne profits.

The revision petition is therefore allowed but in the circumstances without costs.

4. Petitioner allowed.