SUPREME COURT OF INDIA

Mahant Narayana Dasjee Varu

Vs.

Board of Trustees Tirumalai Tirupathi, Devasthanam

C.A.Nos.106 to 109 of 1962

(A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.)

10.09.1964

JUDGEMENT

AYYANGAR, J.:-

1. These four appeals which are on certificates of fitness granted by the High Court of Andhra Pradesh arise out of decrees passed in applications filed under O. 20, R. l2, Civil Procedure Code in two suits brought by the Tirumalai Tirupathi Devastham Committee (hereinafter referred to as the Devasthanam Committee) the predecessor of the respondents for the ascertainment of mesne profits of the Devasthanam properties in the possession of the Mahant of the Sri Hathiramjee Mutt who is the Vicharanikartha or manager of the Tirumalai Tirupathi temples was previously in management of the properties of the temple. From the decrees passed by the Principal Subordinate Judge of Chittoor in the two applications, to the details of which we shall refer presently, two appeals were filed to the High Court and they were there consolidated for hearing and are covered by a common judgment. As the judgment of the High Court somewhat varied the decree granted by the Subordinate Judge the learned Judges granted a certificate of fitness under Art. 133(1) of the Constitution. Appeals 106 and 107 have been filed by the Mahant while the Devasthanam Committee have preferred appeals 108 and 109.

2. The properties which are the subject matter of these proceedings belong to the Idol installed in the famous temple of Tirupathi in the State of Andhra Pradesh. The East India Company were, till about the middle of the last century, in management and administration of the properties of this famous temple of Lord Venkateswara or Srinivasa, also known as Balaji in Northern India and the other connected temples, and after the Madras Regulation 7 of 1817 was passed it was placed under the control and management of the Board of Revenue who carried on the administration through the Collector of the District. As is well-known, there was a movement in England in about 1840 which disapproved a Christian Government like the East India Company being incharge of or administering Hindu or Muslim religious institutions and the Board of Directors in conformity with these ideas, effected a change in their policy, and as a result of orders passed by the Board of Directors the authorities in India relinquished charge of the management of such institutions. Among these institutions was the Devasthanam of Tirupathi-Tirumalai group of temples, and under orders of the Government the management of the properties of the Devasthanam was transferred to the Mahant of Sri Hathiramjee Mutt (whom we shall hereafter refer for convenience as the Mahant) who, as the head of that Mutt, had his headquarters at Tirupathi.

3. The successors in the office of the Mahant of the Mutt were, in accordance with the sanad by

which the East India Company transferred the right of management, successively in management of the institution but during later years there were complaints of mismanagement and in the early years of this century a suit was instituted under S. 92 of the Civil Procedure Code for the framing of a scheme for the better management of the institution and such a scheme was framed by the District Court which was, with some modification, affirmed by the High Court and later by the Privy Council Vide Prayag Das Ji v.Triumala Srirangacharla, ILR 30 Mad 138 (PC). As the administration even under this scheme proved unsatisfactory and there were several serious charges of mismanagement alleged against the Mahant in regard to the affairs of the temple the Madras Legislature enacted Act 19 of 1933 - The Tirumalai Tirupathi Devasthanam Act. The Act came into force on June 6, 1933. Its S. 2 enacted :

"On the coming into force of this Act-

(a) the arrangement made by the Local Government in 1843 for the management of the Tirumalai Tirupathi Devasthanams and the scheme settled by the Privy Council in appeal 6 of 1906 together with the Rules framed thereunder, shall cease to be operative."

Under S. 5 of the enactment the administration of the Devasthanams which was defined to mean the temples specified in the Sch. I attached to the enactment and the endowments thereof etc'. was directed to vest in a Committee called "The Tirumalai Tirupathi Devasthanams Committee" which was to be a body corporate having perpetual succession and a common seal with the right to sue and be sued in the said name." We are not now concerned with the other provisions of the enactment but it would be sufficient to notice that by reason of this vesting under S. 5 the Mahant of Tirupathi who is the appellant in Civil Appeals 106 and 107 of 1962 and the respondent in the other two appeals ceased to have the right to remain in possession of the properties of the Devasthanams. This obvious position was emphasised by a specific provision contained in S. 45 of the same Act which read:

"The Committee shall be entitled to take and be in possession of all the institutions, properties, jewels, records and documents of the Devasthanams."

Provision was also made for the contingency of the Committee not being able to obtain possession voluntarily. Section 45 (2) was this provision and it ran:

"If in obtaining such possession the Committee is resisted or obstructed by any person it may make an application to the Court complaining of such resistance or obstruction and the Court shall, unless it is satisfied that the resistance or obstruction was occasioned by any person claiming in good faith to be in possession on his own account or by virtue of some right independent of that of the Devasthanams, make an order that the Committee be put into possession. Such order shall, subject to the result of any suit which may be filed to establish the right to the possession of the property, be final."

The demand of the Committee which was constituted on June 7, 1933 i.e., immediately on the coming into force of the Act, to the possession of the property belonging to the Devasthanams Committee filed an original petition in 1934 under S. 45(2) to the District Court for a direction that the Mahant should be directed to put them in possession of the property. As complicated questions relative to the title to the several properties claimed by the Devasthanams were raised by the Mahant the learned District Judge referred the Devasthanam to a regular suit by his order dated April 18, 1936. Two suits O. S. 51 and 52 of 1937 were accordingly filed by the Devasthanam on April 9, 1937. O. S. 51 was to recover possession of 10. items of property situated at Tirupathi and

Tirumalai and O. S. 52 was to recover one item of property situated at Tirupathi. The relief claimed in the suits was for possession of the properties which was specified in the plaint and for mesne profits. The learned Subordinate Judge decreed the two suits on June 15, 1942 and granted to the plaintiff possession and directed an enquiry into and a decree for mesne profits payable by the Mahant from June 7, 1933. The defendant Mahant took the matter in appeal but the appeal was dismissed on February 19, 1945, the learned Judges confirming the decree of the trial Court with very slight variations.

4. The Mahant, however, did not immediately surrender possession of the properties, with the result that applications had to be made for executing the decree for possession and within a few days after this application was made the possession of the immovable properties was delivered to the Devasthanams Committee, on January 10, 1946.

5. The present appeals arise out of orders passed ascertaining the mesne profits of the properties decreed to the Devasthanam Committee in O. S. 51 and 52 of 1937 under O. 20, R.12, Civil Procedure Code, and the decrees passed thereon. As stated earlier, there were two, applications made under O. 20, R. 12, Civil Procedure Code which were numbered - Nos. 19 and 20 of 1946 and these were respectively for the ascertainment of mesne profits and a decree therefor in the two suits 51 and 52 of 1937.

6. The learned Subordinate Judge appointed a Commissioner to take evidence and submit a report in relation to this question of mesne profits and elaborate enquiry was held when considerable evidence was led by the parties as to the quantum of mesne profits payable. The only thing to be noticed in this connection is that the Mahant did not produce several of his accounts and that is one feature of the case to which some reference would have to be made in view of some of the arguments addressed to us. Objections were filed to the report of the Receiver and after considering these the learned Subordinate Judge, by his order dated March 28, 1952 ascertained what the mesne profits would be in respect of the properties covered by the two suits and granted a decree therefor to the Devasthanam Committee with interest at 6 per cent from the date of his decree till realisation.

7. Aggrieved by this decree the Mahant filed appeals to the High Court which substantially reduced the amount of the mesne profits and also reduced the rate of interest allowed by the learned Subordinate Judge. It is this decision of the learned Judges that has been attacked on contrary grounds by the Mahant in appeals 106 and 107 and by the Devasthanam Committee in appeals 108 and 109. For the purpose of the disposal of these appeals we do not consider it necessary to advert in any detail to the facts of the case, the nature of the evidence or the manner in which the mesne profits have been ascertained. We shall confine ourselves to the points urged before us and shall state only those facts which are relevant for the consideration of the points urged.

8. Taking up first Civil Appeals 106 and 107, three points were urged before us by learned Counsel for the Mahant who is the appellant in these appeals. In relation to appeal 106 of 1962 which dealt with the mesne profits payable in respect of 10 distinct items of properties, his complaint was confined substantially to the mesne profits decreed as regards items 4 and 6. Item 4 is a stable for horses, while item 6 is an elephant stand. What was originally a stable for horses had been converted into shops by putting up partition and other walls etc. by a preceding Mahant in or about 1912 which were let out and the Mahant had been receiving rent from the shopkeepers. The Commissioner had estimated the rent received or receivable by the Mahant at Rupees 1200/ per year which the learned trial Judge had confirmed. The Mahant in his appeal to the High Court had contended that this estimate was erroneous. The learned Judges of the High Court accepted this

submission and on a fresh and detailed reconsideration of the evidence fixed the rent derivable from the item at Rs. 65/- per month. The fixation of the rent at this rate is not challenged by learned Counsel for the appellant but the point urged is that there were some observations of the High Court in the appeal against the decree in O. S. 51 of 1937 to the effect that as the Mahant did not claim the right to dismantle the shops and as the Devasthanam would get the benefit of the constructions effected by the Mahant, no decree need be passed for the income from this item. On this ground learned Counsel argued that the claim in respect of this item was not open to be made by the Devasthanam Committee at the stage of the enquiry under O. 20, R. 12, Civil Procedure Code. We see no substance in this argument. In the first place, we do not have the Judgment of the High Court on the former occasion to ascertain the exact scope of the observation they then made. Next, the learned Judges of the High Court have themselves referred to this observation and have proceeded to state that the fact that the Devasthanam would have the benefit of the walls and other constructions put up by the Mahant would be a factor which they would take into account in ascertaining the amount of mesne profits payable on this item. We have no basis before us for saying that the learned Judges in the judgment now under appeal have not understood the earlier judgment of the High Court properly.

9. The allowance which they made for this factor, viz., that the Mahant was not claiming to demolish the walls etc. which he had constructed for the purpose of rendering the stables into a shopping space was 1/3rd of the rental and deducting this they passed a decree in favour of the Devasthanam for the other 2/3rd. Learned Counsel urged that this division into 1/3rd and 2/3rd was arbitrary. There is no substance in this argument either, because, in a sense, any allocation would be arbitrary and the suggestion that we should reverse the proportion and allow 1/3rd to the Devasthanam and 2/3rds to the Mahant is about as arbitrary as the order now challenged. We must take it that in fixing this proportion, the learned Judges took into account the income that could have been derived from the stable, if let, as it was, for shops and that which the constructions put up could yield. We consider that both the approach of the learned Judges as well as the result they have reached is fair and just to both parties and does not call for any interference.

10. The case as to item 6-the Stand for elephants and the points urged in regard there to are exactly similar. There also we have the same observations of the High Court in the previous suit 51 of 1937 and the learned Judges on the present occasion have taken those observations into account and granted a decree for 2/ 3rds of what they ascertained on a detailed consideration of the evidence to be the income derivable from the properly. For the reasons already stated, there is no substance in this submission which we reject.

(2) The next point which the learned counsel urged was in relation to the quantum of mesne profits ascertained by the learned Judge as payable in respect of items 7, 8 and 9 in appeal 106 and the single item in Appeal 107. The argument addressed to us on this point, we consider, is wholly without merit. As we have stated already, the Mahant did not produce his accounts and therefore the Court had to do its best in ascertaining the profits from such evidence as was placed before it and this they have done as best as they could.

(8) The last of the points urged was that the learned Judges erred in allowing interest up to the date of realisation on the aggregate sum made up of the principal and interest upto the date of the decree, instead of only on the principal sum ascertained as mesne profits. For the purpose of understanding this point it is necessary to explain how interest has been calculated by the learned Judges. Under Section 2(12) of the Civil Procedure Code which contains the definition of "mesne profits", interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of msene

profits itself. That proceeds on the theory that the person in wrongful possession appropriating income from the property himself gets the benefit of the interest on such income. In the present case the Devasthanam was entitled to possession from and after June 7, 1933 i. e., when the Act came into force and the Devasthanam Committee was appointed. The Mahant having wrongfully resisted the claim of the Devasthanam to possession without surrendering the property, was admittedly bound to pay mesne profits. This, it may be stated, is not disputed. The question raised are, however, two: (1) when is the aggregation of the principal amount of the mesne profits and the interest thereon to be made for the purpose of the total carrying further interest? (2) What is the rate of interest to be charged. The learned trial Judge allowed interest at 6 per cent for the calculation of interest which is part of mesne profits. Having calculated mesne profits on this basis he aggregated the amount of mesne profits i. e. income from the several items of property plus the interest on it up to the date of the plaint i. e., January 10, 1946. On the total sum so ascertained he decreed interest at 6 per cent. till the date of his decree i. e., March 26, 1952. He passed a decree for this sum with further interest at 6 per cent till the date of realisation.

11. One of the principal points raised by the Mahant in the two appeals which he filed to the High Court related to this method of computing the interest. His complaint was that two dates were specified by the trial Judge at which interest became payable on interest and that this was not justified by law and did not proceed on a correct interpretation of S. 34 of the Civil Procedure Code. The learned Judges acceded to these contentions and varied the decree in regard to the rates allowed by the learned Subordinate Judge. They observed :

"The learned Judge should have awarded interest on yearly profits in respect of each item from the date the arrears accrued up to the date of the plaint, from the date of the plaint up to the passing of the decree and thereafter on the aggregate amount of the principal and interest till payment."

In other words, they eliminated the aggregation which the decree of the trial Judge had invoked as on the date of the plaint. It is only necessary to add that in reaching this conclusion the learned Judges acceded to the arguments addressed to them on behalf of the appellant-Mahant. They also reduced the rate of interest on the mesne profits calculated each year from 6 per cent to 4 per cent and also the interest payable after the date of the decree from 6 to 3 per cent. The averages of this reduction in the rate is the subject of the appeals by the Devasthanam which we shall be considering in the proper place.

12. The complaint of learned counsel for the Mahant is not that the reduction of the rate is insufficient but that the learned Judges erred in allowing interest at 3 per cent on the aggregate sum made up of principal and interest up to that date. His submission is that on the terms of S. 34 of the Civil Procedure Code, as it stood at the date when they disposed of the appeals, they could have allowed further interest on the principal sum alone. Learned counsel relies, for this purpose, on the amendment to S. 34 of the Civil Procedure Code effected by the Code of Civil Procedure (Amendment) Act, 1956 = Act 66 of 1956 - which came into effect on January 1, 1957. This Act amended, inter alia, S. 34 of the Code. As the section originally stood, the relevant provision ran.

"Order interest at such rate as the Court deems reasonable to be paid on the principal sum, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged from the date of the decree to the date, of payment."

The section was amended so as to read :

"Order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate not exceeding six per cent per annum as the Court deems reasonable on such principal sum from the date of the decree to the date of payment."

This point, however, was not argued before the High Court even though admittedly the amendment had been in force for over six months before the appeal was disposed of and, in fact, as we have already stated the mode of calculation adopted by the High Court was that which was submitted as the correct one by Counsel for the Mahant. Secondly, this was not an objection taken in the grounds of appeal taken to this Court when seeking a certificate, nor is it raised in the statement of case. Nor is the objection clearly without an answer. In the first place, the decree of the trial Court was passed in 1952. Without pausing to enquire whether the relevant date for determining from when the amended provision would operate might not be that on which the suit was instituted, what the High Court was called upon to enquire was the correctness of that decree. Besides, it is not suggested that the amendment is expressly made retrospective or applicable to pending proceedings. Though, no doubt, the amendment was to a provision in the Code of Civil Procedure, the question would have to be seriously considered whether it does not in reality deal with the substantive rights of parties, so that it might not have retrospective operation as a matter affecting mere procedure. In the circumstances, having regard, however, to the failure of the appellant to urge this point earlier, we decline to permit learned counsel to raise to before us.

13. There were certain other points raised before the High Court that the claim for mesne profits for particular periods were barred by limitation but these, have not been repeated before us and hence they do not call for consideration. These complete the submissions made to us in appeals 106 and 107. None of them have, as seen above, merits and the appeals accordingly fail and are dismissed with costs - one hearing fee.

14. Civil Appeals 108 and 109 of 1962:

We shall now take up appeals 108 and 109 which are by the Devasthanam Committee. The point common to both these appeals is the reduction in the rate of interest which we have already indicated. As pointed out earlier, the learned Judges of the High Court have reduced the interest payable on the mesne profits up to the date of the decree - March 28, 1952 from 6 to 3 per cent. Learned counsel for the Devasthanams urged that the learned Judges were not justified in interfering with the discretion of the trial Judge in awarding this interest at 6 per cent which, counsel urged, was by no means unreasonable, being merely the normal Court rate and that the reasons given for this reduction were unsound. It is, no doubt, true that the rate of interest to be allowed in regard to mesne profits or under S. 34 in such cases is discretionary, seeing there is, in them no question of any contractual rate or any particular rate fixed by statute. The only limitation which is prescribed by S. 34, as it stands now, is that the rate shall not exceed 6 per cent p. a.- a limitation which did not figure in the section before its amendment though Courts as a general rule seldom awarded any rate in excess of 6 percent p. a. Learned counsel is, therefore, right in saying that the rate of 6 per cent granted by the learned trial Judge is not per se unreasonable. The amended S. 34, Civil Procedure Code is, in fact, a statutory recognition that 6 per cent is not by itself an unconscionable or an unreasonably high rate. Besides, this rate was not considered unreasonable or improper by the Mahant himself is also clear from the proceedings. The Commissioner in the report that he made to the Court on May 14, 1951 in which he ascertained the mesne profits payable by the Mahant, computed the interest from June, 1933 onwards at 6 per cent. Elaborate objections were filed by the

Mahant to this report, but so far as the interest allowed was concerned the objection was formulated in ground 40 in these terms :

"The Commissioner erred in awarding interest on the income supposed to have been derived from the properties by the Mahant: The Commissioner ought to have noted that this was not a case of mesne profits at all as the Mahant cannot be said to have been in wrongful possession of the property. Mahant came into possession of the properties as the Vicharanakarta of the devasthanam also and hence there is no question of any wrongful possession. The Mahant was only asked to account for the profits derived by him. Hence the Commissioner erred in awarding interest on the said amounts treating them is mesne profits. In any event, the Commissioner erred in awarding interest for more than 3 years."

The rate of interest at 6 per cent was not challenged at all. The Subordinate Judge before whom no point was made as regards the rate of 6 per cent being too high passed a decree computing interest at that rate. Even when this decree was challenged by the Mahant by an appeal to the High Court no objection was taken to this rate. Though as many as 141 grounds were taken in the memor andum of appeal against the decree of the Subordinate Judge in the appeal in application 19 of 1946 and 37 grounds in the other appeal, there was not any ground which either (1) objected to the rate of 6 per cent as being unreasonably high or (2) complained against the award by the learned Subordinate Judge of the same rate of interest after as before the date of the decree. The only grounds relating to the interest allowed in the decree in application 19 of 1946 (O. S. 51 of 1937) were grounds 14 to 16 and these ran: -

"14. The lower Court has gone wholly wrong in providing for the compounding of interest in three stages :-

(i) up to the date of delivery of possession,

(ii) up to the date of determination, and

(iii) up to the date of payment.

15. The lower Court ought to have held that plaintiff will be entitled to as mesne profits only the actual or ascertained income of each year and for interest therein from the date of realisation till payment.

16. In any view the lower Court is not justified in awarding interest to the past profits as there was no demand made therefor prior to the suit and the award of interest in regard to that is illegal. "

15. In the appeal against the decree in application 20 of 1946 (O. S. 52 of 1937) was ground 12 reading:

"12. In any view the lower Court is not justified in awarding interest to the past profits as there was no demand made therefor prior to the suit and the award of interest in regard to that is illegal. "

During the stage of the arguments, however, this question of rate of interest appears to have been urged before the High Court and the learned Judges, after referring to decisions in most of which 6 per cent was allowed and in one 4 per cent, summarised the position thus:

"The Courts have awarded 6 per cent simple interest on mesne profits unless there are special

circumstances to increase or decrease the rate in a particular case. The same rate is ordinarily awarded on the profits which accrued every year from the date of such accrual till the date of decree and also on the aggregate amount from the date of the decree till the date of the payment. According to the view expressed by us the learned Judge should have awarded interest on yearly profits in respect of each item at the same or different rates from the date of arrears accruing up to the date of the plaint, from the date of the plaint up to the passing of the decree and thereafter on the aggregate amount on the principal and interest till payment. "

Up to this point, learned counsel for the Devasthanam Committee submitted that the learned Judges were right. His complaint, however, is as regards the reduction of the rate of interest from that awarded by the trial Judge and his submission is that the reasons given by the learned Judges for directing this reduction are incorrect and irrelevant. Three reasons have been adduced by the learned Judges as requiring this reduction in the rate. They say :

"The next question is whether there are any circumstances to reduce the rate of interest and give interest at a rate less than six per cent. In this case, as the record shows the Matathipathi was managing the trust properties along with his own properties for about a century and the properties of both the institutions were mixed up and jointly managed. Them were also conflicting claims in respect of the properties between the two institutions. This is not a case of suit for mesne profits Against a trespasser but one against a previous trustee who was managing the property in the same way in which his predecessor in interest was managing for a century. The decree for mesne profits is also for a large amount. Having regard to the aforesaid circumstances, we think that the interest of justice, would be served if the defendant is directed to pay simple interest at the rate of four per cent per annum on the profits from the date the profits accrued each year till the date of the decree and on the aggregate amount at three per cent per annum from the date of the decree till the date of payment."

Learned counsel for the Devasthanam Committee submitted that none of these three reasons afforded proper grounds for reducing the rate of interest. Taking the last one first, that the amount of decree was large, even learned counsel for the Mahant did not seek to support. It became large because (i) the properties of which the Mahant was in possession were numerous, and (ii) the period during which the Mahant had appropriated to himself the income of the properties rightfully belonging to the Devasthanam was long starting from 1933. It was not the case of the Mahant that the Devasthanam Committee unnecessarily prolonged the litigation by delaying tactics.

16. We consider that the second of the grounds viz., that the Mahant was a trustee who had been removed from office and therefore stood in a position different from that of a trespasser is not well-founded. Learned counsel or the Devasthanam Committee submitted that as the possession of the defendant was admittedly wrongful, and that is the whole basis of the decree for mesne profits, a removed trustee who hangs on to the property has no equity which he can put forward in support of his possession. We see considerable force in this submission. The title of the Devasthanam to the property was disputed and suits had to be filed for the recovery of their possession, and litigation conducted which took 12 years to finish from 1933 to 1945. If during this period the Mahant appropriated to himself the income from the property we do not see any justification for his not being made liable for interest at the normal rate. In any event, if the trial court in its discretion awarded interest at 6 per cent, and that is admittedly not per se an unreasonable rate, there was no compelling equity in the Mahant to justify interference with that discretion.

17. The first of the reasons given by the learned Judges does not also appeal to us. It is, no doubt,

true that the properties of the Mutt and of the Devasthanam were mixed up in the hands of the Mahant but these two were being held by the Mahant in two distinct capacities - the first as the head of the Mutt and the other as the Vicharanakartha of the Devasthanams i.e., purely as manager. The fact was that in the first set of properties he might have a beneficial interest but admittedly not so in the second. In the circumstances, we do not see how he becomes entitled to the benefit of a lower rate of interest on mesne profits payable for the properties belonging to the Devasthanam of which he was wrongfully in possession because he chose to mix them up with other property which mixing enabled him to make a claim to the Devasthanam property as well.

18. We, therefore, consider that the learned Judges of the High Court were not justified in reducing the rate of interest from 6 per cent to 4 per cent p.a. for the period up to March 28, 1952 and to 8 per cent p.a. on the aggregate sum thereafter. The method suggested by the learned Judges for the calculation of interest on mesne profits each year is, however, correct and interest at 6 per cent p.a. would have to be calculated on that basis before and after the decree. The decree will be modified accordingly.

19. The next submission of learned counsel was in relation to the quantum of mesne profits allowed for items 4, 6, 7, 8 and 9 in appeal 108. As regards items 4 and 6, we have already explained the nature of these items and the basis upon which the learned Judges of the High Court have computed the mesne profits payable. It was the submission of learned counsel that the 1/3rd which the learned Judges had allowed as representing the value of the improvements should not have been allowed. We do not agree. In the first place, there was the observation of the High Court in the appeals from the original suits to which we have already adverted and, secondly, it was common ground that the Mahant was not demolishing or removing any of the improvements which he had affected in items 4 and 6. It was further suggested that as these improvements had been effected in 1912 or there abouts the Mahant had derived sufficient income from the property to cover the cost of the improvements and that therefore no allowance should have been given on the basis that he had effected improvements which he was leaving on the property. It cannot, however, be disputed that it was open to the Mahant, under the law, to have demolished the improvements which he had effected before surrendering possession and, in the circumstances, we do not consider that the learned Judge erred in allowing a small reduction of 1/3rd, taking into account this feature of the case.

20. Learned counsel submitted that the quantum of mesne profits in regard to items 7, 8 and 9 had not been properly calculated and a similar complaint was also made in respect of Pathapushkarni with which appeal 109 is concerned. We have closely examined the judgment of the High Court and are satisfied that this complaint is without foundation. The learned Judges have made a detailed examination of the evidence and have allowed to the Devasthanam profits on whatever sources of income which were proved to have existed at the relevant dates. In the circumstances, we do not consider this submission tenable.

21. Lastly, learned counsel submitted that the learned Judges erred in deducting in respect of house property collection charges at 10 per cent. The argument was that though while considering several of these items the learned Judges had expressed the view that 10 per cent of the estimated income could be allowed as the collection charges, in the concluding portion of the judgment they had stated that as regards House property they would allow only 1/ 12th for that purpose. For this reason it was submitted that the decree drawn up which allowed 10 per cent as collection charges was wrong and not in accordance with the operative portion of the judgment. We do not propose to pause to consider this objection which, in our opinion, is groundless, because it is admitted, and this is stated in the judgment itself, that after the judgment of the High Court, the parties were directed

to file by consent a joint memo working out the mesne profits for which a decree could be passed after making the allowances which were granted. Such a statement was filed and it is on that basis that the decree passed by the High Court proceeds. The parties carried out the decision of the High Court in the manner in which both of them understood it and we see, therefore, no reason to examine the question any further.

22. The result is that these appeals will be allowed only in regard to the rate of interest which was varied by the High Court. As the appellant has succeeded only partially we direct that the appeals be allowed with costs, but that in computing it, only one half of the hearing fee (one set), shall be allowed.

Appeals allowed partly.

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