ANDHRA PRADESH HIGH COURT

Rachepalti Atchamma

Vs.

Yerragunta Rami Reddi

Civil Revn. Petn. No. 2294 of 1952

(K. Subba Rao, C.J. and P. Jaganmohan Reddy, J.)

19.09.1952. 27.11.1956

JUDGMENT

K. Subba Rao C.J.

1. This revision has been referred to a Division Bench by Satyanarayana Raju J.
The facts are simple and are not in dispute. One Rachepalli Nagireddi filed O. S. No. 42 of 1948 on the file of the Court of the Subordinate Judge, Anantapur, for a declaration of his title to the plaint schedule properties and for a permanent injunction restraining the respondent from interfering with his possession of the properties. Pending the suit, the plaintiff died and the petitioner was brought on record as his legal representative. She applied for, and obtained amendment of the plaint to include an alternative prayer for possession. But, even in the amended plaint, there was no prayer for future mesne profits. The first Court substantially dismissed the suit but, on appeal, the High Court reversed the judgment of the first Court and gave a decree granting the aforesaid two reliefs. But the decree did not give the relief for future mesne profits. The respondent preferred an appeal against the decree of the High Court to the Supreme Court. Pending the appeal to the Supreme Court, the petitioner took possession of the properties through Court and thereafter she filed on 13-12-1951, I. A. No. 46 of 1952 under Order 20, Rule 12, Civil Procedure Code, for assessment and for recovery of future mesne profits due to her from the date of the plaint till 15-10-1950, the date on which she took possession. The respondent opposed the application on the ground among others that, as the petitioner did not ask for that relief in the plaint, she was not entitled to have that relief under Order 20, Rule 12, Civil Procedure Code. The learned Subordinate Judge accepted his contention and dismissed the application. The Supreme Court appeal also was subsequently dismissed. Before the dismissal of the appeal in the Supreme Court, the question of mesne profits was not raised before that Court and no directions in respect of that relief were given in the judgment of the Supreme Court. The above revision petition was filed against the order of the learned Judge dismissing the application for future mesne profits.

2. Learned counsel for the petitioner contends that a claim to future mesne profits is based upon a cause of action different from that for possession and that, therefore, an application for the said relief, though it was not asked for in the plaint, would be maintainable at any time before the suit

is finally disposed of and, in the present case, as the application was filed before the suit was finally disposed of by the Supreme Court, it was maintainable. Learned counsel for the respondent counters this argument by stating that it has been authoritatively decided by the Supreme Court that a Court has no jurisdiction to order future mesne profits, if there is no prayer to that effect in the plaint and, that apart, as the suit was finally disposed of by the Supreme Court, the petitioner not having taken direction of the Supreme Court before the appeal pending therein was dismissed, is now precluded from agitating any further the question of mesne profits in the suit.

3. A full Bench of the Madras High Court in *Basavayya v. Guravayya*[1], had to consider the scope of Order 20, Rule 18, Civil Procedure Code i.e., the provision governing enquiries as regards profits in a partition suit and incidentally in the course of the judgment had also reviewed the law, interpreting the provisions of Order 20, Rule 12, Civil Procedure Code. Though the question did not directly arise in that case, the learned Judges considered the scope of Order 20, Rule 12, Civil Procedure Code, to support their conclusion on the interpretation of Order 20, Rule 18, Civil Procedure Code. The observations, therefore, are of great weight and cannot be brushed aside or ignored as obiter dicta. Viswantha Sastry J., summarised the law bearing on that provision at p. 177 (of Mad LJ) thus :

> "In view however, of the considerable reliance placed on Order 20, Rule 12, Civil Procedure Code, in *Ghulsum Bivi v. Ahamadsa Rowther*[2], in dealing with the right of a plaintiff to profits accruing during the pendency of a partition suit, it is desirable to consider the scope of this provision. A claim for possession and a claim for past mesne profits have been held to be based on different causes of action, at any rate in the decisions of this Court. Order 2, Rule 4, Civil Procedure Code, however permits their joinder in one suit. There is a material difference between a claim for past and a claim for future mesne profits.

Order 7, Rule 2, Civil Procedure Code and Section 7, Sub-Section (1) of the Court-fees Act require that the amount of past mesne profits claimed should be approximately stated in the plaint and ad valorem Court fee should be paid on such amount. These provisions can have no application to future profits, for it is not possible for the plaintiff to predicate how long the litigation is going to last or give even an approximate statement of the amount of mesne profits that might become payable at the end. The cause of action for future mesne profits is the plaintiff's being kept out of possession during the suit and arises subsequent to the suit. In empowering Courts to award future mesne profits, Order 20, Rule 12, Civil Procedure Code, makes an exception to the general rule that a plaintiff can only sue on such cause of action as has arisen on the date of instituting his suit. The objection is to avoid the multiplicity of litigation that would result if persons, unlawfully kept out of possession of their lands, were obliged to file suits every three years for mesne profits accruing after the institution of a suit in ejectment and during its pendency in the original and appellate Courts. But the plaintiff could not claim future mesne profits as

[1](1951) 2 Mad LJ 176 : ILR (1952) Mad 173
[2] ILR 42 Mad 296

a matter of right, the cause of action for such profits not having arisen to him at the

date of the suit. Hence it is that the power of the Court to award mesne profits subsequent to the suit has been held to be discretionary and a mere omission, as distinguished from a refusal, to grant future mesne profits asked for, has been held not to bar a fresh suit for that relief : *Doraiswami v. Subramania*[3], *In re Katheeswaram Ekantha Lingaswami Koil*[4], Section 11 of the Court-fees Act (as amended in Madras) requires payment of Court-fee on future mesne profits only if the plaintiff desires to execute the decree awarding him such profits. The Judicial Committee interpreting the provisions of Section 196 of the Civil Procedure Code of 1859 and this court construing the correspondent provisions of Order 20 Rule 12, held that whether a plaint contained or not a claim to future profits, the Court had the power to grant them under these special provisions : *Fakharudin Mohamed Ashan v. Official Trustee of Bengal*[5], and *Kemgaswamy v. Subbamma*[6], When the Legislature has expressly empowered the Court to grant relief for future mesne profits, that is to say, in respect of a cause of action arising subsequent to the suit, there is no reason to circumscribe this power by importing a qualification that there must have been a specific prayer in the plaint for the recovery of such unascertainable profits. Future mesne profits could, we think, well be awarded as part of the general relief to which a plaintiff is entitled." The learned Judges, after considering the stage at which such a relief could be given concluded their discussion thus :

> "Where a decree awarding possession is silent with regard to an enquiry into future mesne profits and the decree has not completely disposed of the suit which, for one reason or another, continues to be pending, there is nothing in the Civil Procedure Code prohibiting the decree-holder from applying to the Court during the pendency of such suit for an enquiry into future mesne profit or the Court from ordering such an enquiry."

We have extracted the aforesaid passage in extenso as the Pull Bench gave a considered treatment to the subject and summarised the legal position having regard to decided cases and the relevant provisions of the Civil Procedure Code, clearly and authoritatively. It would be futile and even pedantic to cover the ground over again. We respectfully accept and adopt the aforesaid observations as the law on the subject.

4. But it is contended that the Supreme Court in *Md. Amin v Vakil Ahmad*[7], has laid down a contrary proposition in regard to the scope of Order 20, Rule 12, Civil Procedure Code, and therefore, to the extent, the decision of the Pull Bench must be deemed to have been overruled. The facts in the case before the Supreme Court were : A suit was filed by the quondam minors and heirs of one Haji Abdur Rahman for possession of the properties after setting aside a so-called deed of family settlement executed by and between the parties in regard to the distribution of the properties belonging to the estate. In the plaint, no relief was asked for mesne profits. The High Court decreed the suit and also awarded to the plaintiffs mesne profits. The Supreme Court confirmed the decree but deleted the relief for mesne profits. In deleting the relief for mesne profits, their Lordships observed at p.545 (of SCJ) thus :

[3]33 Mad LJ 699 (PB) [5] ILR 8 Cal 178 [7]1952 SCJ 539 : 1953-1 Mad LJ 6
[4]71 Mad LJ 677 [6]57 Mad LJ 728

> "It was however pointed out by Shri S. P. Sinha that the High Court erred in awarding to the plaintiffs mesne profits even though there was no demand for the same in the plaint. The learned Solicitor-General appearing for the plaintiffs conceded that there was no demand for mesne profits as such but urged that the claim for mesne profits would be

included within the expression "awarding possession and occupation of the property aforesaid together with all the rights appertaining thereto." We are afraid that the claim for mesne profits cannot be included within this expression and the High Court was in error in awarding to the plaintiffs mesne profits though they had been claimed in the plaint. The provision in regard to the mesne profits will therefore have to be deleted from the decree." It is not clear from the aforesaid observations that the Supreme Court was dealing with the question of future mesne profits. That apart, their Lordships did not purport to lay down as a proposition of law that Court had no jurisdiction to award future mesne profits if there was no demand for the same in the plaint. As the Full Bench of the Madras High Court pointed out, the relief of future mesne profits is a discretionary one and it is open to the Court to refuse to exercise the discretion in suitable cases. We cannot, therefore, hold that the Supreme Court in the aforesaid decision held that a Court has no jurisdiction to award future mesne profits unless there was a prayer for that relief in the plaint. In our view, the Full Bench decision still holds the field and no part of the judgment has been either expressly or impliedly overruled by the judgment of the Supreme Court.

5. Subsequent to the aforesaid Supreme Court judgment, it was argued before Rajagopala Ayyanger, J., of the Madras High Court in *Arunachala Mudali v. Maragathammal*[8], that the law laid down by the aforesaid Full Bench was no longer good law in view of the Supreme Court decision. There, the suit was for possession but the plaint did not contain any relief for past or future mesne profits. The trial Court granted a decree for the relief of possession and that decree was affirmed by the High Court. While the Second Appeal was pending the plaintiff filed IA. No. 840 of 1949 purporting to be under Order 20, Rule 12, Civil Procedure Code, and praying for a direction to hold an enquiry to ascertain mesne profits subsequent to the plaint.
The learned District Munsif dismissed that application but, on appeal, the learned Subordinate Judge set aside that order and remanded that application for disposal in accordance with law by the first Court. Against that order, an appeal was preferred to the High Court. After citing the passage from the judgment of the Supreme Court extracted above, the learned Judge observed :

"Before the Supreme Court the matter arose not after the decree had become final as in the present case but at the hearing on the point- whether the decree was correctly passed or not. These observations therefore apply a fortiori to the present case. It might very well be that in the light of this judgment the question of the power of a Court to give directions under Order 20, Rule 12, when there was no prayer in the plaint for such a relief might have to be reconsidered. But in the present case it is unnecessary to pursue this point because the decree in the suit did not award to the plaintiff a relief for future profits. This is sought to be added, so to speak by reopening the decree and

[8]1954-2 Mad LJ 696 : AIR 1955 Mad 527

getting a modified or supplemental decree being passed." The reasons for the conclusions arrived at by the learned Judge directly apply to the present case, for, in the instant case also, the decree had become final and no attempt was made before the Supreme Court to get this relief incorporated in the decree or to get suitable directions for making necessary enquiry. But we do not agree with the learned Judge that, in view of the observations of

the Supreme Court, the Full Bench decision requires any reconsideration for, as we have pointed out, those observations could be explained in the manner we did.

6. The question of the impact of the decision of the Supreme Court on that of the Full Bench was again raised before Umamaheswaram J., of this High Court in *Venkatasubbaiah v. Veerayya*[9], There the suit was for partition and. therefore, the provisions of Order 20, Rule 18, Civil Procedure Code, directly applied. The learned Judge observed at page 246 (of Andh WR) thus :

> "It is not necessary for me to decide in this case as to whether the Full Bench decision, in so far as it deals with a claim for future mesne profits under Order 20, Rule 12, Civil Procedure Code, does not require reconsideration in the light of the Supreme Court decision."

Dealing with the judgment of Rajagopala Ayyangar, J., the learned Judge' proceeded to observe :

> "I might however point out that the grounds on which the Pull Bench decision was distinguished by the learned Judge are not wholly justifiable as from the statement of the facts, it appears that the application under Order 20, Rule 12, Civil Procedure Code, was filed during the pendency of the Second Appeal in the High Court and the decree passed by the trial Court for ejectment has not become final. If so, the observations in 1951-2 Mad LJ 176 : ILR (1952) Mad 173 (FB), directly governed that case and the learned Judge ought to have followed it."

Reliance is placed strongly by Mr. Vedantachari, learned counsel, on these observations in support of his contention that the application in the present case having been filed during the pendency of the Supreme Court appeal, the Court below should have ordered it. But in our view, the fact that the Supreme Court appeal was pending would not help the petitioner as she did not bring the fact of the existence of this application to the notice of the Supreme Court and did not seek to get incorporated in the decree any directions in regard to the said relief by the Supreme Court. The judgment of the Supreme Court had become final and the petitioner cannot now seek to reopen it.

7. In the result, we hold that the present application is not maintainable and, in any view, as the decree had become final, in the exercise of our discretion we refuse to allow this application. The Civil Revision Petition fails and is dismissed with costs.
Petition dismissed.

[9]1955 Andh WR 244 : AIR 1955 And 172