

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.987 of 2015

ORDER:

Heard Sri T.D. Phani Kumar, learned counsel for the petitioner and Sri Bodduluri Srinivasa Rao, learned counsel for 2nd respondent.

2. This Civil Revision Petition is filed challenging the order dt.29-12-2014 in I.A.No.1050 of 2010 in O.S.No.9 of 1997 of the V Additional District Judge, Tirupati, Chittoor District.

3. The 1st respondent herein had filed the said suit as O.S.No.95 of 1988 on the file of the Principal Senior Civil Judge, Tirupathi for partition of the plaint schedule properties and seeking half share therein. It was later re-numbered O.S.No.9 of 1997 on transfer to the Family Court from V Additional District Judge, Tirupathi and was decreed on 04-07-1997. Under the decree, no mesne profits had been awarded to 1st respondent. The said judgment was questioned in the High Court in A.S.No.1099 of 1997 but the said appeal was also dismissed on 30-03-2010.

4. In the meantime 1st respondent filed I.A.No.779 of 1997 for passing final decree for appointment of an Advocate Commissioner for division of

suit house into two equal shares and the Court appointed Advocate Commissioner and he filed a report.

5. After the appeal was dismissed by the High Court, the 2nd respondent, who is the daughter of the 1st respondent, who had died in the meanwhile, filed I.A.No.1050 of 2010 under Order 20 Rule 12 CPC to appoint Advocate Commissioner to assess mesne profits of the suit schedule property till the date of delivery of the possession.

6. Counter affidavit was filed to the said application by the 7th petitioner raising a plea that the 1st respondent had raised a contention that the suit schedule property had been let out to a tenant with a rent of Rs.3,000/- till 2000 and thereafter the rent was enhanced to Rs.5,000/- per month and her share was not being paid; that the suit building has never been leased out to third parties and 4th petitioner herein himself was running a business therein; and so 2nd respondent is not entitled to any mesne profits. Plea of bar of limitation was also raised.

7. By order dt.29-12-2014, the Court below allowed the said application holding that 2nd respondent was entitled to mesne profits from 07-04-1998.

8. A reading of the said order indicates that although a contention was raised by the petitioners that

1st respondent had previously filed O.S.No.525 of 1998 before the Principal Junior Civil Judge, Tirupati against the petitioners in respect of the same property, claiming a sum of Rs.54,000/- towards past rents-cum-damages and also future rents-cum-damages, the said suit had been dismissed on 19-07-2002 holding that 1st respondent is not entitled to claim the suit amount from the petitioner and also holding that the said suit is pre mature; but this contention has not at all been adverted to by the Court below. Also specific contention was raised by the petitioners that 2nd respondent cannot invoke Order 20 Rule 12 CPC and seek mesne profits. But the Court below simply referred to certain citations without giving any finding on the legal issue and in fact held that the 2nd respondent is entitled to mesne profits. The concept of mesne profits arises only where a defendant is held to be in unauthorized possession of the property which is subject matter of the suit and does not apply to a claim by a co-sharer for the profits realized by another co-sharer of the family properties.

9. In this view of the matter, I am of the view that the impugned order cannot be sustained and that the Court below should be directed to reconsider the matter afresh in accordance with law by adverting to all the contentions raised by the petitioners.

10. Therefore, the Civil Revision Petition is

allowed and the order dt.29-12-2014 in I.A.No.1050 of 2010 in O.S.No.9 of 1997 of the V Additional District Judge, Tirupati is set aside; the said I.A. is remitted back to the said Court to pass a fresh order in accordance with law by considering all the contentions raised by the petitioners herein; and this exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

11. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-09-2015

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