

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.388 of 2016
and C.M.P.No.2082 of 2016

Hindustan Petroleum Corporation Ltd,
Thalamuthu Natarajan Building,
No.8, Gandhi Irwin Road,
Egmore, Chennai 600 008

... Petitioner

Vs

The South Arcot Diocesan Corporation
Rep by its Secretary Rev.Father,
Robert M. Archbishop's House,
Pondicherry - 605 001

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 22.12.2015 made in I.A.No.11702 of 2015 in O.S.No.7213 of 2001 on the file of VI Assistant Judge, City Civil Court, Chennai.

For Petitioner : Mr.O.R.Santhanakrishnan

For Respondent : Mr.S.M.Edward Stanley

ORDER

Hindustan Petroleum Corporation, who is the defendant in O.S.No.7213 of 2001, is the petitioner in the revision petition filed under Article 227 of the Constitution of India. South Arcot Diocesan Corporation, is the respondent herein. The respondent herein is admittedly the owner of the land, which is the subject matter of the suit. The land was leased out for running a petroleum outlet.

2. Admittedly, the land was originally leased out to "Esso Standard Eastern Inc" for running a petroleum outlet. The petitioner / defendant being the successor-in-interest continued to be the lessee as lessee holding over. Terminating the lessee, the respondent filed the above suit for recovery of possession (Ejectment). The petitioner herein, who is the defendant in the said suit, on appearance, filed an application in I.A.No.3751 of 2013 under Section 9 of the Tamil Nadu City Tenants Protection Act for a direction to sell the land to the petitioner herein / defendant for a market price to be fixed by the Court. The said application was dismissed by an order dated 10.12.2010. The said order was challenged in C.M.A.No.34 of 2011 and the Appellate Judge, namely, the V Additional Judge, City Civil Court, Chennai, dismissed the said C.M.A by judgment and decree

dated 12.01.2015. When the same was challenged before this Court in C.R.P.No.1493 of 2015, it proved unsuccessful and the Civil Revision Petition came to be dismissed on 08.04.2015. However, this Court directed the trial Court to complete the trial and dispose of the suit on merits and in accordance with law on or before 31.07.2015. It is pertinent to note that the said order came to be passed at the time of admission itself. Thereafter, the respondent herein/ plaintiff filed I.A.No.11702 of 2015 under Order VI Rule 17 C.P.C for amendment of the plaint so as to include a prayer for future mesne profits from the date of filing of the suit.

3. The said application was resisted on the ground that the relief was time barred and also on the basis of the contention that the relief was barred by order II Rule 2 C.P.C. Negating both the contentions, the learned trial Judge allowed the said application and passed an order on 22.12.2015 permitting the respondent herein / plaintiff to effect amendment of the plaint and thereby include a prayer for the relief of future mesne profits, namely, mesne profits from the date of filing of the suit. It is as against the said order of the trial Court dated 22.12.2015, the present Civil Revision Petition has been filed under Article 227 of the Constitution of India.

4. Notice before admission was given and the respondent is also represented by a counsel.

5. The arguments advanced by Mr.O.R.Santhanakrishnan, learned counsel for the petitioner and by Mr.S.M.Edward Stanley, learned counsel for the respondent are heard. The certified copy of the impugned order and the copies of the other documents produced in the form of typed set of papers are also perused.

6. Admittedly, the respondent / plaintiff is the owner of the land, regarding which the petitioner / defendant is the lessee. The suit has been filed for recovery of possession based on the purported determination of the lease. The petitioner / defendant is contesting the case. While filing the plaint, the respondent / plaintiff failed to include a prayer for either past mesne profits or future mesne profits. After the petitioner / defendant failed in its attempt to get an order under Section 9 of the Tamil Nadu City Tenants Protection Act, which order came to be confirmed by this Court in the earlier Civil Revision Petition with a direction to the trial Court to expedite the trial and dispose of the suit on or before 31.07.2015, the respondent herein /

plaintiff chose to file I.A.No.11702 of 2015 under Order VI Rule 17 C.P.C. for amendment of the plaint. The proposed amendment is only for inclusion of a prayer for the relief of future mesne profits from the date of the plaint till delivery of possession and supporting averments.

7. The said application for amendment was resisted on the ground that the said prayer is barred by order II Rule 2 C.P.C, since the respondent / plaintiff failed to file the suit for the entire relief based on the cause of action, on which the suit came to be originally filed. It is also resisted on the ground that the prayer for recovery of mesne profits is barred by limitation, so far as the claim relates to the period prior to the date of filing of the amendment application. The learned trial Judge, on proper appreciation of facts, came to a correct conclusion that the cause of action for claiming future mesne profits is a continuing cause of action and the failure to seek the relief, will not bar the plaintiff from including such a prayer by way of an amendment. So far as the plea of bar of limitation is concerned, the learned trial Judge held that the claim of mesne profits was in respect of the period subsequent to the filing of the suit and hence, the same was not barred by limitation.

8. Leaned counsel for the petitioner contends before this Court that the cause of action for claiming mesne profits for each period arose on the expiry of such period; that the failure to claim within the time limit stipulated in the Limitation Act, will make the relief barred'; that since the future mesne profits from the date of plaint was not claimed till August 2015, the date on which the amendment application was filed, the claim of mesne profits from the date of filing of the amendment application alone shall partake the character of a claim for future mesne profits; that such past mesne profits should have been claimed within three years from the date of the same becoming due and that, hence the proposed prayer for mesne profits for the period from the date of plaint till 3 years prior to the filing of the amendment petition shall stand barred by limitation.

9. As an answer to the above said contention, learned counsel for the respondent relies on a judgment of a larger Bench of the Hon'ble Supreme Court in ***Gopalakrishna Pillai and others -vs- Meenakshi Ayal and others*** reported in AIR 1967 SC 155 and contends that in cases to which order XX Rule 12 C.P.C applies, the Court, seized of the matter, has a discretionary power to pass a decree directing an enquiry into the future mesne profits and that such

direction may be issued as a general relief, even though such relief is not specifically asked for in the plaint.

10. The relevant passage in the said judgment of the Supreme Court is extracted hereunder:-

"7.Order 20, R.12 enables the Court to pass a decree for both and future mesne profits but there are important distinctions in the procedure for the enforcement of the two claims. With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of O.7, Rr.1 and 2 and O.7, R.7 of the Code of Civil Procedure and S.7(1) of the Court Fees Act, the plaintiff must plead this cause of action, specifically claim a decree for the past mesne profits, value the claim approximately and pay court-fees thereon. With regard to future mesne profits the plaintiff has no cause of action on the date of the institution of the

suit, and it is not possible for him to plead this cause of action on the date of the institution of the suit, and it is not possible of him to plead this cause of action or to value it or to pay court-fees thereon at the time of the institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of O.20, R.12 apply. But in a suit to which the provisions of O.20, R.12 apply. But in a suit to which the provisions O.20, R.12 apply, the Court has a discretionary power to pass a decree directing an enquiry into the future mesne profits, and the Court may grant this general relief though, it is not specifically asked for in the plaint."

Referring to the said observation made by the Hon'ble Supreme Court in the above said judgment, learned counsel for the respondent submits that even without such amendment, the plaintiff can urge the

Court to issue a direction for the determination of the future mesne profits from the date of plaint till the date of delivery and that, still by way of an abundant caution, the respondent / plaintiff has chosen to file such an application for amending the plaint to include the prayer for future mesne profits.

11. The learned counsel for the petitioner / defendant made a meek attempt to contend that the suit having been numbered in the year 2001, the date on which the plaint was numbered as original suit should be taken as the date of filing of the suit, from which date alone, the future mesne profits could be calculated. The above said contention cannot be countenanced. A plaint filed on a particular day might have been returned for rectifying the defects and if the plaint is re-presented after such rectification and the same is taken on file, filing of the suit will relate back to the original date of presentation of the plaint and not the date of re-presentation after rectification of the defects. Even in case of delay in re-presentation, if the delay is condoned, then the filing of the suit will relate back to the original presentation of the plaint. The plaint in this case came to be presented in September 1998. By the proposed amendment, the respondent /plaintiff wants to include a prayer for deciding the mesne

profits from September 1998, namely, the date of filing of the suit till delivery of possession. In the light of the judgment of the larger Bench of the Hon'ble Supreme Court cited supra, the contention of the petitioner / defendant that the plea for mesne profits is barred by limitation, does not seem to be *prima-facie* sustainable. Anyhow, it shall not be proper to decide the question of limitation regarding the proposed plea in the amendment application itself and it shall be kept open to be canvassed in the suit.

12. For all the above reasons, this Court comes to the conclusion that the challenge made to the order dated 22.12.2015 passed by the trial Court in I.A.11702 of 2015 cannot succeed and the revision deserves to be dismissed.

13. In the result, the revision fails and the Civil Revision Petition is dismissed. The respondent / plaintiff shall carry out the amendment within a week from the date of receipt of a copy of this order. The petitioner / defendant shall be given a chance to file an additional written statement within two weeks thereafter. Since the time granted by this Court for the disposal of the suit in its order dated 08.04.2015 in C.R.P.No.1493 of 2015 has already expired and it

becomes infructuous because of the present order, a fresh direction is issued to the trial Court to complete the trial and dispose of the same within three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2016

Index: Yes/No

Internet: Yes/No

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To

The VI Assistant Judge,
City Civil Court, Chennai.

P.R.SHIVAKUMAR, J

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