

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.9625 OF 2016

Smt. Kamalabai Shrikrishna Salunkhe & Ors. ...Petitioners
vs.
Shri Tukaram Rajaram Salunkhe & Anr. ...Respondents

Mr. A. R. Sangappa for the Petitioners.
Mr. Jayesh Kocheta for Respondent No.1.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 8th November, 2017**

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The Petitioner No.1 happens to be Defendant No.1 in Regular Civil Suit No.90/2012. The suit was filed by the brother in law of the present Petitioner for executing peaceful possession of the suit property which was in possession of Defendant No.3. The Plaintiff had also claimed Rs.60,000 for using the suit premises without any license or permission. The Petitioner happens to be the widow of the brother of the Plaintiff. The suit was decreed by judgment and decree dated 3/5/2014. The Petitioner was directed to handover the possession of the suit property in favour of the plaintiff within two weeks from the date of the order.

3. The prayer for mesne profit of Rs.5,000/- was dismissed and the Court had directed a statutory inquiry to be held in respect of mesne profit under Order 20 Rule 10(i) (c) of the Code of Civil Procedure until recovery of possession of the suit property. Being aggrieved by the said Judgment and decree the Petitioner had filed Appeal No.176/2014 in the Court of District Judge-3, Solapur. The Petitioner had filed a separate

application below Exh.5 seeking stay of the execution of judgment and decree dated 3/5/2014.

4. Mr. Kocheta, Learned counsel for the Respondent submitted that by virtue of the probate the Petitioner was entitled to a share and that she along with her children were in possession of the property to which she was entitled and in addition she was in possession of the suit property also. It was also submitted that the decreeholder was entitled to Rs.20,000/- towards compensation of the suit premises.

5. The learned Trial Court has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Anderson Wright and Co. vs. Amar Nath Roy and others***¹ and has directed that the decree is stayed on the following conditions:

- a) The appellants are hereby directed to pay an amount of Rs.5,000/- (Rs. Five Thousand only) per month from the date of filing of appeal till final disposal of the appeal towards reasonable compensation for granting stay.
- b) The appellants shall pay arrears of the reasonable compensation within six weeks from today.
- c) The appellants shall pay reasonable compensation for each and every month before 10th day of every calendar month in the Court.
- d) Amount paid by the appellants be adjusted into the final amount payable by the appellants in the enquiry towards mesne profit.

6. In the facts of the case it is an admitted position that the present Petitioner is not a tenant of the Respondent she happens to be a family member. It was her specific contention that it was permissive possession and therefore, the question of mesne profit or compensation would not come in picture. As per the Black's Law Dictionary mesne profit is defined as the profits of an estate received by a tenant in wrongful

1 2005(6) SCC 489

possession and recoverable by the landlord. 'The nearest analogy is a claim for mesne profits.' Hence, there is no question of mesne profit as is being contended by the Respondent herein. The claim of the Plaintiff towards mesne profit of Rs.5,000/- p.m. has been dismissed. It is pertinent to note that the Respondent has not challenged clause (3) of the order dated 3/5/2014 and, therefore in an appeal filed by the original Defendant, the Appellants cannot be directed to pay amount of Rs.5,000/- p.m. from the date of filing of the appeal till final disposal of the appeal towards compensation. It is clear that the claim towards mesne profit is being replaced by compensation. In view of this, clause (c) of the impugned order dated 12/10/2015 directing the Appellant/present Petitioner to pay an amount of Rs.5,000/- p.m. from the date of filing of the appeal till final disposal of the appeal towards reasonable compensation for granting stay is hereby rejected.

7. Stay to the execution and implementation of the judgment and decree dated 3/5/2014 passed by learned Joint Civil Judge, Junior Division, Solapur in Regular Civil Suit No.90/2012 shall continue without any condition precedent till the final disposal of the appeal.

8. The Petition is allowed in the above terms. Rule is made absolute.

(SMT. SADHANA S. JADHAV, J.)