

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

A.S.No.1858 of 1995

JUDGMENT :

This appeal is filed against decree and judgment dated 21.04.1995 in OS.No.106 of 1989 passed by the Subordinate Judge, Tenali.

The appeal is filed by defendant No.2, who is essentially aggrieved by the award of damages for use and occupation at the rate of Rs.250/- per month against defendant Nos.1 and 2.

This Court has heard Sri K.S.Murthy, learned counsel representing Sri V.Ravi Kumar, learned counsel for the appellant and Sri M.P.Chandra Mouli, learned counsel for the respondents.

The essential question that is argued by learned counsels is about the imposition of Rs.250/- per month as damages for use and occupation of the property, namely half portion of item 1 of plaint 'A' schedule. The judgment was pronounced on 21.04.1995.

The suit is filed for a declaration that the plaint 'A' schedule property belongs to the plaintiffs; for possession of the same after evicting defendant Nos.1, 2 and 7 from there and to deliver the possession etc. The plaintiff No.1 is the son of one S.Satyanarayana Avadhani, the plaintiff No.2 is the

wife of plaintiff No.1 and also the niece of Satyanarayana Avadhani. Defendant Nos.1, 3 to 6 are daughters of Satyanarayana Avadhani and defendant No.2 is the son of defendant No.1. The suit as mentioned earlier is filed for partition and for various reliefs. As can be seen from the plaint averments, initially defendant Nos. 1 and 2 were permitted to reside in the 'A' schedule property, out of sympathy. Later, the plaintiff asked defendant Nos.1 and 2 to vacate the premises. As they failed to vacate the premises; the suit was filed leading to the impugned judgment. It is noticed that the direction to pay sum of Rs.250/- per month was given against both defendant Nos.1 and 2 but only defendant No.2 has challenged the finding. Defendant No.1 has not challenged the finding.

The argument of the learned counsel for the appellant is that there is absolutely no material to show that Rs.250/- per month is a reasonable or correct figure. Learned counsel also argues that as per the averments in the plaint, defendant Nos.1 and 2 are in possession of that item because of permissive possession. Therefore, the learned counsel for the appellant states that unless and until Court comes to a conclusion that the appellant has overstayed or committed trespass etc, no damages can be awarded.

In reply thereto, learned counsel for the respondent argued that there is adequate discussion about the damages

to be awarded. Referring to the judgment, he points out to paras 20, 21, 22, 23 and 24 on the basis of which the lower Court came to a conclusion that the appellant and another are liable to pay damages. The Court below while discussing issue No.4 clearly noticed that although there was permissive possession of the appellant initially, the evidence on record shows that they were asked to vacate the premises thereafter. The Court also noticed that there is no adequate evidence with regard to the damages payable. The Court, however, felt that after considering all the evidence that is available on record, the Court can take judicial notice of the areas under occupation of the appellants and then fix the damages. This is clearly discussed in para 20 while deciding about issue No.4. The lower Court, which is a first Court, on fact and law had the benefit of hearing the matter completely came to a conclusion that the damages are to be awarded on the basis of the area of the share of the plaintiff No.1 as also the age of the building. Damages were also awarded with effect from the date of filing of the suit. The arrears of past profits were rejected. These factors indicate an assessment of all the facts and figures. Considering the fact that this is a family litigation across the members of the family, the first Court which has heard the matter came to a conclusion that a sum of Rs.250/- per month is a reasonable figure. Nothing to the contrary is pointed out during the course of the argument. Mathematical accuracy is also not possible in every case. In

fact ground No.8 of the appeal merely states that the lower Court erred in directing the appellant and his mother to pay Rs.250/- per month. Nothing is actually pointed out to oppose this finding. No contemporaneous evidence is pointed out to show that the 'figure' is not correct.

This Court, on an appreciation of the submissions made by both the parties, has to agree with the findings recorded by the Court below. The appellant can only succeed if he can prove that the figure is exorbitant figure or a baseless figure. Neither of the said facts is actually proved. This Court, on an appreciation of the perusal of the judgment, notices that after considering all the facts and figures, the Court below has come to a conclusion that Rs.250/- per month is a reasonable estimate. In the absence of anything to the contrary, this Court is of the opinion that the appellants have not made out a case for interference with the judgment and decree passed by the Court below. Neither the oral evidence nor any other factors were pointed out to disprove the finding of the Court below. The order passed is a reasonable order in the facts and circumstances of the case. The age of the building, the area of the share of the plaintiffs are matters which were eminently within the knowledge of the Court below.

Therefore, this Court holds that there are no merits in the appeal and accordingly, the appeal is dismissed. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this appeal shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: .09.2018

KLP

