

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3069 of 2018

ORDER:

This Civil Revision Petition has been filed against an order termed by the trial Court as a final decree.

2. Heard Mr. P. Prabhakara Rao, learned counsel for the revision petitioner.

3. The decretal order as against which the present revision is filed, reads as follows:

“(i) that the petition be and the same is hereby allowed with costs passing final decree in favour of the petitioner and against the respondent granting mesne profits @ Rs.3,000/- per month in respect of Item No.1 of the suit schedule property and Rs.15,000/- per acre per annum in respect of Item No.2 of the suit schedule property from the date of institution of the suit on 13-07-2006 till the date of delivery of possession of items No.1 and 2 of the suit schedule properties on 10-09-2015 and 30-06-2015 respectively.

(ii) that the respondent be and is hereby granted two months time to pay the above said amount;

(iii) that the respondent do pay to the petitioner a sum of Rs.1,536/- towards costs of the petition and do bear his own costs of Rs.NIL, as no costs memo filed.”

4. Since what is stated by the trial Court is that a final decree has been passed on the application taken out by the plaintiff, the appropriate remedy for the petitioner will be to file a regular appeal. The contention of the learned counsel for the revision petitioner is that if a decree for mesne profits is passed, it would become a valid decree amenable to the jurisdiction of the Appellate Court, only if the plaintiff was directed to pay court fee on the same.

5. But the above contention is capable of cutting the ice on both sides. If what is challenged in the revision is not a decree

amenable to challenge before an Appellate Court, it cannot also be a decree amenable to execution. Once there is a threat of execution, the remedy provided under the statute for an appeal alone has to be exhausted.

6. A decree relating to mesne profits, is also a decree, amenable to challenge under Order XLI Rule 1 read with Section 96 of CPC. Such a decree will not even be covered by Order XLIII Rule 1 CPC. It is only in cases where the decreetal order does not fall under any one of the clauses contained in Order XLIII Rule 1, that a revision may lie. Under normal circumstances, a final decree whether it be in a suit for partition or in a suit for mortgage, is amenable to challenge in a regular appeal. Therefore, leaving it open to the petitioner to file a regular appeal, the Civil Revision Petition is disposed of.

The Registry is directed to return the certified copies of the fair decreetal order to the counsel for the revision petitioner.

V. RAMASUBRAMANIAN, J

Date: 08-06-2018

Ksn