

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

APPEAL SUIT No.1351 of 1998

ORDER:

In this first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, the plaintiffs in OS.No.81 of 1984 assailed the common judgment, dated 07.08.1996, of the learned Senior Civil Judge, Narsapur, passed in O.S.No.81 of 1984 & batch insofar as the decree and judgment passed in OS.No.81 of 1984.

2. I have heard the submissions of Sri *Y.Chandra Sekhar*, learned counsel appearing for the 2nd appellant-2nd plaintiff, and of Sri *K.Subrahmanyam*, learned counsel appearing for the contesting respondents 2,3,5,6 & 7. This appeal suit is already dismissed against the 4th respondent for default on 18.10.2011. The 1st appellant-1st plaintiff died. I have perused the material record.

3. To begin with, the facts and the submissions, which are necessary to be stated as a prelude to this judgment, in brief, are as follows:

The trial Court by the common judgment, dated 07.08.1996, disposed of three original suits, OS.No.81 of 1984, OS.No.43 of 1985 and OS.No.33 of 1988. However, the unsuccessful plaintiffs in OS.No.81 of 1984 preferred this first appeal suit assailing the common judgment to the extent they are aggrieved of. Be it noted that the sole plaintiff (since died) brought the suit OS.No.81 of 1984 against the defendants for declaration of the plaintiff's title over the plaint 'A' and 'B' schedule properties and consequently to direct the defendants 2, 3 & 5 to 7 to vacate the said properties and deliver vacant possession of the same to the plaintiff and for possession of

plaint 'C' and 'D' schedule properties after ejecting the said defendants there from and for a decree against the said defendants jointly and severally for a sum of Rs.45,250/- together with subsequent interest @12% per annum from the date of the suit till the date of recovery of possession towards damages for use and occupation of plaint 'A' to 'D' schedule properties by the defendants 2 and 3 and for future profits in respect of plaint 'A' to 'D' schedule properties and for costs. On merits, the trial Court partly decreed the said suit in favour of the 2nd plaintiff/2nd appellant, who is brought on record on the death of the sole plaintiff. The operative portion of the decree of the trial Court in the said suit reads as under:

- “1) that the plaintiffs be and are hereby declared as the absolute owners of the plaint 'A' and 'B' schedule properties;**
- 2) that the defendants 2, 3 and 5 to 7 be and are hereby directed to vacate the plaint 'A' to 'D' schedule properties and deliver vacant possession of the same to the 2nd plaintiff;**
- 3) that the relief of future profits be and the same is hereby dismissed, as a receiver is appointed and is auctioning the leasehold rights of the property every year and depositing the sale proceeds into court;**
- 4) that the 2nd plaintiff be and is hereby held as entitled to withdraw the amounts deposited by the receiver every year into court;**
- 5) that the receiver appointed in this matter be and is hereby directed to deliver possession of the plaint schedule properties to the 2nd plaintiff after the expiry of the present lease period and also to deposit the amount, if any, kept with him;**
- 6) that the rest of the suit claim be and the same is hereby dismissed without costs; and**
- 7) that the defendants 2, 3 and 5 to 7 do pay to the 2nd plaintiff a sum of Rs.23,938-10 ps., towards costs in the suit bearing their own costs of Rs.8-00 (institution costs) in the suit.”**

As noted, the plaintiffs filed this instant appeal suit questioning the dismissal of the suit insofar as the relief of recovery of damages for use and occupation of the properties in a sum of

Rs.42,250/- and denial of a decree for future profits from the date of the suit till the date the receiver is appointed.’

4. In this backdrop, the questions that fall for determination in this appeal suit are as follows:

- “1) Whether the 2nd plaintiff/2nd appellant is entitled to entitled to a decree for damages as well as future mesne profits from the date of the suit till the date the receiver is appointed? And; if so, whether the decree of the trial Court insofar as not granting the said reliefs is liable to be set aside?
- 2) To what relief?”

5. POINTS:

Learned counsel for the appellants contended that the trial Court, having decreed the suit by declaring the title and having ordered for delivery of possession of the plaint schedule properties to the 2nd plaintiff and having also granted to the 2nd plaintiff the amounts deposited by the receiver into Court, ought to have granted the reliefs of damages and future mesne profits also instead of dismissing the suit in that regard. He would further submit that as per settled legal position, costs and future profits follow the event and, therefore, the trial Court was in error in not granting the said relief. He would next submit that the trial Court was in error in not properly appreciating the facts and evidence insofar as the relief of future mesne profits and recovery of damages in a sum of Rs.45,250/- claimed in the plaint.

6. *Per contra*, learned counsel for the contesting respondents, while supporting the decree and judgment of the trial Court on the relevant aspects, contended as follows: - ‘The trial Court framed,

apart from other issues, the following two specific issues – (i) whether the plaintiff is entitled to damages for use and occupation? If so, for what period and for what amount? And (ii) whether the plaintiff is entitled to future profits? The trial Court considered the facts and evidence in proper prospective while answering all the issues. On issue no.14, that is the 2nd issue stated supra, the trial Court specifically held that the 2nd plaintiff is not entitled to future profits as the receiver appointed is auctioning the leasehold rights of the suit properties every year and depositing the amounts into Court and the successful party would be entitled to withdraw the amount deposited by the receiver. Similarly, on issue no.13, that is the 1st issue stated supra, the trial Court considered the relevant facts and evidence and held that the 2nd plaintiff is not entitled for damages for any period which is earlier to the appointment of the receiver. The well reasoned findings of the trial Court do not call for interference. The suit is of the year 1984 and the claim of past profits relates to a period prior to the suit and hence, it is difficult for both the parties to now secure evidence regarding the mesne profits. Any relief granted would therefore, be of no avail to the 2nd plaintiff-appellant. The first appeal is devoid of merit and is liable to be dismissed.

7. I have given thoughtful and earnest consideration to the facts and submissions.

8. Insofar as the relief of future profits, that is from the date of the suit and till the date the receiver was appointed, it is an admitted and undisputed fact that the receiver appointed was auctioning the leasehold rights in respect of the plaint schedule properties and he is

depositing the amounts realised from such auctions into Court. Since a receiver is appointed and the property is custodia legis and as the trial Court ordered in the decree that the 2nd plaintiff is entitled to withdraw the amounts deposited by the receiver every year into Court, as rightly held by the trial Court, the question of granting a decree for future mesne profits does not arise for consideration. Both the learned counsel submitted that in view of the appointment of receiver soon after the institution of the suit, the claim period is a very short period and a nominal claim of Rs.10,000/- is made towards future mesne profits. It is also fairly stated that the 1st plaintiff died and that at this distance of time it is very difficult to secure evidence with regard to mesne profits realised from the plaint schedule properties during the year 1984. Learned counsel for the contesting respondents further submitted that if a decree for future profits for that short period is to be now granted and a Commissioner is to be appointed for determination of the said profits, the parties have to incur more expenditure on such exercise than the profits that may be ultimately be determined by the Commissioner and hence, in the facts and circumstances of the case, the finding of the trial Court calls for no interference. In the peculiar facts and circumstances of the case, this Court is of the considered view that at this distance of time, there is no need to reverse the decree of the trial Court of the year 1996 and order determination of future mesne profits from the date of suit till the date of the appointment of receiver which is stated to be a very short period.

9. Dealing with the relief of damages for use and occupation/past profits, the claim of the sole plaintiff (since died) was that he was

dispossessed from the property on 24.12.1983, and therefore he is entitled to damages from the date of dispossession till the date of the suit, that is, 07.08.1984. From the material on record, it is apparent that the 2nd plaintiff could not bring on record cogent evidence to substantiate his entitlement to the quantum of damages claimed. It is also noticeable from material record that mostly sugar cane was raised in the schedule lands. It is submitted on behalf of the contesting respondents that during the said period no crops were realised from the plaint schedule lands and that after the institution of the suit a receiver was appointed and hence, the trial Court was justified in not granting the relief of damages for use and occupation. Having regard to the facts peculiar to this case and the further fact that there is no reliable evidence in regard to plaintiff's entitlement to the claimed sum of damages or a part thereof, this Court finds that the decree of the trial Court refusing to grant the relief of damages calls for no interference.

10. In the result, the Appeal Suit is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

Date: 25th January, 2018
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