

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.924 OF 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/plaintiffs aggrieved by the order, dated 22.01.2019, passed in I.A.No.2067 of 2017 in O.S.No.1012 of 2017 by the IX Additional Chief Judge, City Civil Court, Hyderabad, wherein the Court below has dismissed the subject Interlocutory Application filed by the revision petitioners/plaintiffs seeking to direct respondent Nos.6 to 10/defendant Nos.6 to 10 (tenants) to deposit the rents into the Court during pendency of the Original Suit.

2. Heard the learned counsel for revision petitioners/plaintiffs and the learned counsel for respondent Nos.1 to 3/defendant Nos.1 to 3 and perused the record.

3. In the course of submissions, it is brought to the notice of this Court that there is no claim for mesne profits in the Original Suit.

4. The prayer in the Original Suit is as follows:

“Plaintiffs therefore pray for a judgment and decree in favour of the Plaintiff:

- i) To grant a Preliminary Decree declaring that the Plaintiff are entitled to 1/5th share in the suit schedule property;
- ii) For getting the same divided into 5 equal parts and to handover possession of the Plaintiff's shares viz. 1/5 share to each of the Plaintiffs by appointing a Commissioner and to pass a final decree allotting

Plaintiff's share in the suit schedule property to the Plaintiffs and put them in possession of their share.

iii) Allow costs of the suit;

iv) And pass such other and further orders as this Hon'ble court deems fit and proper."

5. Learned counsel for respondent Nos.1 to 3/defendant Nos.1 to 3 relied on a decision of the Honourable Supreme Court in Mohd. Amin and others v. Vakil Ahmad and others¹, wherein it is held that without there being a claim for mesne profits, no such relief can be granted.

6. Learned counsel for the revision petitioners/plaintiffs would submit that the revision petitioners/plaintiffs will seek amendment of the plaint to claim mesne profits.

7. Since there is no claim for mesne profits in the Original Suit, it is not appropriate to direct respondent Nos.6 to 10/defendant Nos.6 to 10 to deposit the rents in the Court during pendency of the Original Suit. However, it is made clear that the observations made in this order will not come in the way of the revision petitioners/plaintiffs to seek necessary amendment in the plaint to claim mesne profits and also to seek any interim arrangement, during pendency of the Original Suit.

8. With the above observations, the Civil Revision Petition is disposed of.

¹ AIR 1952 SC 358

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

February 05, 2020.
MD

