

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

SECOND APPEAL NO. 194 OF 2021

1. Satyabhamabai Wd/o Santoshrao
Radke, since deceased through her LRs:

1-A. Deorao S/o Santoshrao Radke,
Aged 78 years, Occupation:-
Agriculturist, R/o: Ajani, Tah:
Kamptee, District: Nagpur.

1-B. Krishnarao S/o Santoshrao Radke,
Since deceased, through its Lrs:-

a) Niranjana Wd/o Krishnarao Radke,
aged about:66 years, Occupation:
Household, R/o:Ajani (Radke),
Tahsil: Kamptee, Dist : Nagpur.

b) Nitin S/o Krishnarao Radke,
aged about: 46 years, Occupation:
Agriculturist, R/o: Ajani (Radke),
Tahsil: Kamptee, Dist: Nagpur.

c) Lalit S/o Krishnarao Radke,
aged about : 43 years, Occupation:
Agriculturist, R/o: Ajani (Radke),
Tahsil : Kamptee, Dist : Nagpur.

d) Rahul S/o Krishnarao Radke,
aged about: 36 years, Occupation:
Advocate, R/o. Ajani (Radke),
Tahsil : Kamptee, Dist. : Nagpur.

- 1-C. Rekha W/o Sharad Karamore,
aged : 46 years, Occupation:
Service, R/o: Dal Oil No.1,
Kamptee, District: Nagpur.
- 1-D. Sadanand S/o Khushalrao Girde,
aged about 42 years, Occupation:
Service, R/o: Plot No.36, Chitnis
Nagar, Near Shiv Sena Chowk,
Nagpur.
- 1-E. Vasundhara W/o Prashant Morey,
aged: 40 years, Occupation: Service,
R/o: Laxmi Tower, Flat No.T-4,
Kamptee, Dist: Nagpur.
2. Rukhaminibai Wd/o Dharmaraj
Radke, aged : 95 years, Occupation:
Household, R/o: Ajani, Tahsil :
Kamptee, District: Nagpur.

.... **APPELLANTS.**
(Org. Plaintiffs/Landlords)

// **VERSUS** //

Sheela Devi W/o Ramashankar Prasad,
Since deceased through its legal heirs:-

1. Ramashankar S/o Jiralal Prasad,
Aged about:-73 years, Occupation:
Retired, R/o: Behind Church, Ganesh
Nagar, Kanhan, Taluka: Parseoni,
District: Nagpur.

2. Amol S/o Ramashankar Prasad,
aged about: 41 years, Occupation:
Service, R/o: Behind Church, Ganesh
Nagar, Kanhan, Taluka: Parseoni,
District: Nagpur.

.... **RESPONDENTS.**
(Org. Defendants/Tenants)

Shri R.I. Agrawal, Advocate for Appellants.
Shri P.A. Jibhkate, Advocate for the Respondents.

CORAM : **ANIL S. KILOR, J.**
DATE OF RESERVING THE JUDGMENT : **06/12/2021**
DATE OF PRONOUNCING THE JUDGMENT : **27/04/2022**

JUDGMENT :

1. In this appeal a challenge is raised to the reversal of judgment and decree in Regular Civil Suit No. 51 of 2000 dated 21/04/2019 and thereby directing an inquiry under Order 20 Rule 12 of Civil Procedure Code for calculating mesne profit, vide judgment and decree dated 09/08/2021 passed by learned District Judge-11 and Additional Sessions Judge, Nagpur in Regular Civil Appeal No. 299 of 2019.

2. The brief facts, which are relevant to decide the controversy in this appeal, are as follows : (The parties are referred to as per their status before the trial Court).

The Plaintiffs are the owners of the suit property. Defendant No.1 was the tenant in the said premises. The defendant was in arrears of rent from the tenancy month of October 1999 for three months and therefore, a notice was issued to the defendant on 14/01/2000 calling upon the defendant to pay entire arrears of rent. The tenancy of the defendant also came to be terminated by the said notice. Accordingly, a suit for eviction was filed on the ground that the defendant Sheeladevi had left the suit premises in the year 2013 and started staying elsewhere at Ganesh Nagar, Kanhan.

3. During pendency of the suit, the peaceful possession of the suit premises was handed over by the defendants to the plaintiff on 21/02/2019. Thereupon, the issues were amended and the decree was passed by the learned trial Court granting mesne profit

of Rs.2,21,800/- along with interest @ 6% from the date of the judgment, vide judgment and decree dated 25/04/2019 passed by the Civil Judge Jr. Dn., Kamptee in Regular Civil Suit No.51 of 2000.

4. The defendants feeling aggrieved by the said judgment and decree carried an appeal namely Regular Civil Appeal No. 299 of 2019, which came to be allowed by setting aside the aforesaid judgment and decree dated 24/04/2019 and thereby further directed to hold an inquiry under Order 20 Rule 12 of C.P.C. for calculating mesne profit from the date of institution of suit i.e. 27/03/2000 till the actual handing over of the possession i.e. on 21/02/2019. The said judgment and decree is the subject matter of the present appeal.

5. This Court on 24th September 2021, has framed the following substantial questions of law :

- (1) *Whether the first Appellate Court was right in issuing direction to the trial Court to conduct inquiry as to mesne profit particularly when both the parties have adduced evidence?*

- (2) *Whether the first Appellate Court committed wrong in observing that separate inquiry is required and the amount of mesne profit can not be decided in an eviction suit?*
- (3) *Whether the first Appellate Court committed wrong in not deciding the cross-objection of the appellants/ landlord for enhancement of the quantum of the mesne profit?”*

6. I have heard the learned counsel for the respective parties.

7. Shri Agrawal, learned counsel for the appellant submits that under the provisions of Order 20 Rule 12 of C.P.C. more particularly under clause (ba) where the suit is for recovery of immovable property and for rent and mesne profit, the court may pass decree for mesne profit for directing an inquiry as to such mesne profit. He, therefore, submits that the trial Court had rightly passed a decree of mesne profit which has erroneously set aside. The learned counsel for the appellant has placed reliance on the judgments of the Hon'ble Supreme Court of India in the case of *Marshall Sons & Co. (I) Ltd. ...vs.. Sahi Oretrance (P) Ltd.*¹,

1 (1999) 2 SCC 325

judgment in the case of *Sardar Bhag Singh..vs..Vikram Sandhu*² and judgment of Andhra Pradesh High Court in the case of *Alok Kumar Sharma..vs..Smt. T. Hemalath*³.

8. It is submitted that in Writ Petition No. 567 of 2019 filed by the plaintiff complaining that the trial Court was not proceeding with the matter, this Hon'ble Court in view of the fact that the defendants handed over the possession to the plaintiff on 21/02/2019, has observed that the only question which remains is of the mesne profit. He therefore, submits that in view of the observations of this Court made in the order dated 25th February 2019 in the above writ petition, the trial Court proceeded to decide the issue in respect to mesne profit and accordingly the decree of mesne profit was passed vide judgment and decree dated 24/02/2019.

9. The learned counsel for the appellant submits that there is no prohibition under Order 20 Rule 12 to pass a final decree of

² (2018) 18 SCC 374

³ AIR 2013 AP 7

mesne profit without directing inquiry into mesne profit. He, therefore, submits that the learned first appellate Court has committed error in holding that no decree of mesne profit can be passed without holding inquiry into it. He, accordingly, prays for quashing and setting aside the impugned judgment and decree, dated 9th August 2021 passed in Regular Civil Appeal No. 299 of 2019.

10. On the other hand, Shri Jibhkate, learned counsel for the respondents supports the impugned judgment and decree and submits that the learned first appellate Court has rightly set aside the judgment and decree passed by the trial Court, granting mesne profit without holding inquiry as contemplated under Order 20 Rule 12 (c) of the C.P.C.

11. It is submitted that in a suit for recovery of possession of immovable property and for rent or mesne profit, the Court may pass a decree of mesne profit under Order 20 Rule 12(ba) in respect of mesne profit for the period prior to institution of the suit.

However, for the mesne profit from the date of institution of the suit until the delivery of possession or relinquishment of possession or expiration of three years from the date of decree, mesne profit can be granted only after conducting inquiry under Order 20 Rule 12(c) of CPC.

12. To consider the rival contentions of the parties, I have perused the record and proceedings and also the judgments cited by the learned counsel for the respective parties.

13. In this case, the whole controversy, revolves around a question whether the Court can pass a decree of mesne profit under the provisions of Order 20 Rule 12 of C.P.C., without directing inquiry for calculating mesne profit?

14. Thus, at this stage, it is appropriate to refer to Order 20 Rule 12 of the C.P.C., which reads thus:

*“12. Decree for possession and mesne profits. -
(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne*

profits, the Court may pass a decree – (a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit, or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”

15. Mesne Profit is defined under Section 2(12) of C.P.C.,

which reads thus:

“2(12) “mesne profits” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession;”

16. In this case, the learned counsel for the appellant is harping upon Order 20 Rule 12(1)(ba) to submit that without directing inquiry the Court can pass a decree for the mesne profit.

17. The Calcutta High Court in the case of *Ramani Mohan Burman ..vs.. Benode Bihari Dhoot*⁴, has held thus :

“6. Order 20 Rule 12 deals with the decree for possession and mesne profits. In sub-rule (1). it empowers the Court in a suit for recovery of possession of immovable property and for rent or mesne profits to pass a decree (a) for the possession of the property, (b) for the rents accrued during the period prior to institution of the suit or it may direct an enquiry as to such rent: (ba) for mesne profits or directing an enquiry as to such mesne profits. Clause (ba) is to be read in conjunction with clause (b). It has no independent status. It relates to mesne profits for the period prior to the institution of the suit. Unless it is given such a meaning, it would make clause (c) of sub-rule (1) of Rule 12 of Order 20 CPC redundant. The mesne profit for the period after the institution of suit is covered under clause (c). In respect of mesne profits after the institution of suit, the Court has to direct an enquiry as to rent or mesne profits from the institution of the suit till (i) delivery of possession to the decree-holder, or (ii) the relinquishment of the possession of the judgment-debtor with notice to the decree-

holder through Court, or (iii) the expiration of three years from the date of the decree, whichever. even in the three clauses first occurs. Sub-rule(2) requires passing of a final decree in respect of rent or mesne profits where an enquiry is directed under clause (b) or (c) in accordance with the result of such enquiry. Thus, from a plain reading of Rule 12. it appears that the court has power to pass a decree for mesne profits for pre-suit period. Unless agreed" by the parties, post-suit mesne profit cannot be decreed without an enquiry in: view of specific provision contained in clause (c) of sub-rule (1) of Rule 12 of Order 20 CPC.

6.1. ...

6.2. Inasmuch as. clauses (b) and (ba) of sub-rule (1) speaks of a decree for rents and decree for mesne profits for the pre-suit period or a decree directing an enquiry as. to such rent or mesne profits. These two clauses provide two options to the Court either to pass a decree for rent or for mesne profits for the pre-suit period or to direct an enquiry for rent or mesne profits for the pre-suit period. It does not Include post-suit period. Prior to 1976 Amendment, clause (b) included both rent and mesne profits which has since been bifurcated in clauses (b) and (ba) In the 1976 Amendment. No new provision has since been attempted to be added. It was clause (b) as it stood prior to 1976 Amendment has since been bifurcated and specifically provided in two different clauses, one for rent and other for mesne profits. The amendment has not effected in deviation or change in law. Therefore, clause (ba) is distinct and different from clause (c). Clause (ba) cannot overlap or supersede or

eclipse clause (c). It has to confine itself to a situation other than that covered by clause (c).

6.3. The specific provision as provided clearly indicates that court is not empowered to pass a decree for mesne profits or rent for the post-suit period without holding an enquiry since such a decree is permissible only under clause (c). which provides for directing an enquiry and not for passing of a decree straightaway. Where such enquiry is directed, a final decree is required to be passed in view of sub-rule (2) of Rule 12.”

18. Thus, from the observations made in the above referred judgment, it is clear that from a plain reading of Rule 12 of Order 20 of the C.P.C. the Court has power to pass a decree for *mesne profit* for the period prior to institution of the suit and unless agreed by the parties, mesne profit from the date of institution of the suit till the delivery of possession or relinquishment of possession or expiry of three years from the date of decree, cannot be decreed without an inquiry in view of specific provision contained in clause (c) of sub-rule (1) of Rule 12 of Order 20 C.P.C.

19. In my respectful opinion, the view taken by the Division Bench of Calcutta High Court is more probable and appropriate and hence, I respectfully disagree with the view taken by the single Bench of the Andhra Pradesh High Court in the case of *Alok Kumar Sharma* (supra).

20. In the teeth of above referred position of law, I revert back to the facts of the present case.

21. This Court vide order dated 25th February 2019 in Writ Petition No. 567 of 2019, in the light of the fact that during the pendency of the said writ petition and the suit on 21/02/2019 the defendants delivered the possession to the plaintiff, following observations have been made:

“The undisputed position is that the petitioners have taken over the possession of the property on 21.02.2019 and the only question which remains is of the mesne profit. The trial Court can proceed further with the civil suit pending.

We are assured by the respondent No.2 who is personally present before this Court that he shall cooperate for speedy disposal of the matter and personally attend the Court on each

and every date even if his counsel remains absent.”

22. Though this Court has observed that the only question which remains was of the mesne profit, it cannot be interpreted contrary to the provisions of law. The said observation needs to be read with provision under Order 20 Rule 12 of C.P.C. and there cannot be any deviation from the same.

23. The learned appellate Court therefore, rightly reversed the judgment of the trial Court and directed inquiry under Order 20 Rule 12 of the C.P.C. in the facts and circumstances of this case and particularly as the defendants do not agree on the quantum of mesne profit as claimed by the plaintiffs. Thus, I do not find any error or perversity in the impugned judgment dated 9th August 2021 passed in Regular Civil Appeal No. 299 of 2019.

24. As far as the judgments cited by the learned counsel for the appellant are of no help to the appellant for the following reasons:

25. The judgment in the case of *Sardar Bhag Singh* (supra) is distinguishable on facts and the issue which is involved in this case is not same.

26. In the case of *Marshall Sons & Co.* (supra) again it is distinguishable on the facts and the issue involved in the said case is different.

27. In the circumstances, I have no hesitation to hold that the appellate Court was right in issuing direction to the trial Court to conduct inquiry as to mesne profit and no wrong is committed by the learned first appellate Court in observing that separate inquiry is required. As the inquiry into mesne profit is directed, according to me, Substantial Question of Law No.(3) does not survive. I have answered the substantial question of law in above terms and I pass the following order.

The appeal is **dismissed**. No order as to costs.

At this stage, learned counsel for the appellants makes a request that the inquiry may be expedited in view of the fact that the appellant 1-A is more than 80 years of age. Accordingly, it is requested to the learned trial Court to expedite the inquiry and decide it finally on or before 31th August, 2022.

(ANIL S. KILOR, J)

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