

Anar Devi Deceased Through Her Lr. vs Vasudev Mangal on 10 March, 2022

Author: M.R. Shah

Bench: B.V. Nagarathna, M.R. Shah

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 1852-1859 OF 2022

Anar Devi (D) through LR

...Appellant(s)

Versus

Vasudev Mangal Etc. Etc.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 11.08.2020 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur in the respective writ petitions, by which the High Court has partly allowed the writ petitions preferred by the respondents herein – judgment debtors and has dismissed the writ petitions preferred by the judgment creditor and has reduced the amount of mesne profits during the pendency of the first appeals before the first appellate court, the original judgment creditor has preferred the present appeals.

2. That the appellant herein instituted four different suits against the Date: 2022.03.10 17:15:35 IST Reason:

respective respondents for recovery of possession of the disputed suit property. It was the case on behalf of the original plaintiff that the respondents were in possession of four different portions of her residential house as licensee and that she was entitled for restoration of possession as well as mesne profits on termination of their licence. All the four suits came to be decreed by the learned trial Court vide common judgment and decree dated 27.11.2019. 2.1 Feeling aggrieved and dissatisfied with the judgment and decree passed by the learned trial Court, the original defendants – respondents herein have preferred appeals before the first appellate court. They also filed applications to stay the common judgment and decree dated 27.11.2019 passed by the learned trial Court, during the pendency of the first appeals. Vide order dated 12.02.2020, while staying the execution of the judgment and decree dated 27.11.2019, the first appellate court directed the respondents herein – original defendants to pay

mesne profits at different rates as under:

Name of the Tenant/Respondent Mesne Profit fixed by the First Appellate Court

1. Vasudev Mangal Rs. 10,000/-
2. Mohan Lal Mangal Rs. 5,500/-
3. Chimman Lal Rs. 3,000/-
4. Shyamlal Mangal Rs. 7,000/-

Total Rs. 25,500/-

2.2 Feeling aggrieved and dissatisfied with the respective orders passed by the first appellate court directing the judgment debtors – defendants – appellants before the first appellate court to pay mesne profits as above, the appellant herein preferred writ petitions before the High Court to enhance the amount of mesne profits. The original appellants – respondents herein also preferred writ petitions challenging the amount of mesne profits determined by the first appellate court. By the impugned common judgment and order, the High Court has allowed in part the writ petitions preferred by the original appellants – respondents herein and has reduced the amount of mesne profits as under:

Name of the Tenant/Respondent Mesne Profit modified by the High Court

1. Vasudev Mangal Rs. 4,000/-
2. Mohan Lal Mangal Rs. 3,300/-
3. Chimman Lal Rs. 1,500/-
4. Shyamlal Mangal Rs. 4,000/-

Total Rs. 12,800/-

Consequently, the writ petitions preferred by the appellant herein to enhance the amount of mesne profits have been dismissed. 2.3 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court in reducing the amount of mesne profits, the legal representative of judgment creditor – original plaintiff has preferred the present appeals.

3. We have heard learned counsel for the respective parties at length.

4. From the impugned common judgment and order passed by the High Court, it appears that while reducing the amount of mesne profits, what has weighed with the High Court is that the premises is residential, being used for residential purposes and the construction is about 100 years old and that the report of the approved valuer dated 9.2.2020 was with respect to commercial premises. The High Court has thereafter considered the DLC rate. However, the High Court has not at all considered the market rate as per the current potential of the suit property. The High Court has mechanically reduced the mesne profits to 50%. Even if the valuer's report was for commercial use/commercial property, in that case also, the mesne profits could not have been reduced by 50%.

In the facts and circumstances of the case, we are of the opinion that if the mesne profits are awarded as under, it will meet the ends of justice and it can be said to be awarding just mesne profits, while staying the common judgment and decree passed by the learned trial Court:

Name of the Tenant/Respondent Mesne Profit fixed by this Court

1. Vasudev Mangal Rs. 7,500/-
2. Mohan Lal Mangal Rs. 4,500/-
3. Chimman Lal @ Pardeep Kumar Rs. 2,250/-
through LRs.
4. Shyamlal Mangal through LRs. Rs. 5,500/-

Total Rs. 19,750/-

5. In view of the above and for the reasons stated above, the present appeals are partly allowed. The impugned common judgment and order passed by the High Court is modified to the extent that in the case of Vasudev Mangal, instead of mesne profits at the rate of Rs.4,000/- per month, the respondent – original appellant shall pay mesne profits at the rate of Rs.7,500/- per month; in the case of Mohan Lal Mangal, instead of mesne profits at the rate of Rs.3,300/- per month, the respondent – original appellant shall pay mesne profits at the rate of Rs.4,500/- per month; in the case of Chimman Lal @ Pradeep Kumar through Lrs., instead of mesne profits at the rate of Rs.1,500/- per month, the respondents – original appellants shall pay mesne profits at the rate of Rs.2,250/- per month and in the case of Shyam Lal Mangal through Lrs., instead of mesne profits at the rate of Rs.4,000/- per month, the respondent – original appellant shall pay mesne profits at the rate of Rs.5,500/- per month. The rest of the order passed by the learned first appellate court dated 12.02.2020 is hereby ordered to be maintained. The appeals before the first appellate court are ordered to be expedited.

6. Accordingly, all these appeals challenging the impugned common judgment and order passed by the High Court reducing the amount of mesne profits are hereby partly allowed. The appeals preferred against dismissal of the writ petitions preferred by the appellant herein to enhance the amount of mesne profits stand dismissed. The impugned common judgment and order passed by the High Court is modified to the aforesaid extent. No costs.

..... J.
[M.R. SHAH]

NEW DELHI;
MARCH 10, 2022.

..... J.
[B.V. NAGARATHNA]