

Choudappa & Anr.

v.

Choudappa since Deceased by Lrs. & Ors.

(Special Leave Petition (Civil) No. 3056 of 2023)

03 September 2024

[Pankaj Mithal and R. Mahadevan, JJ.]

Issue for Consideration

In 2014, an application purported to be u/s. 141 CPC or under Order XX Rule 12 CPC was filed by the respondents for the determination of the mesne profits as directed by the judgment, order and decree dated 12.07.1973. Whether such an application is barred by limitation.

Headnotes[†]

Code of Civil Procedure, 1908 – Or.XX, r.12 and s.141 – A suit for recovery of possession and for correction of mutation entries was filed by respondents in the year 1963 and it was decreed on 12.07.1973 – The said judgment, order and decree specifically directs for holding an inquiry regarding mesne profits from the date of the suit i.e., 24.09.1963 in accordance with Order XX Rule 12, CPC – Respondents applied for execution and were put into possession of the suit land property in the year 2005 – Thereafter, in 2014 an application was filed by respondents for the determination of the mesne profits – Petitioners moved an application u/Or.VII, r.11(d) CPC contending that such an application was hopelessly barred by limitation – Application u/Or.VII, r.11 (d) CPC rejected by the trial Court – Revision filed against the said order was dismissed by the High Court – Propriety:

Held: The Court of first instance while passing the judgment and order dated 12.07.1973 had specifically stated for holding an inquiry regarding mesne profits from the date of the suit i.e., 24.09.1963 in accordance with Order XX Rule 12, CPC – Such an inquiry is nothing but a continuation of the suit and is in the nature of preparation of the final decree and as such, it cannot be said that any application moved as a reminder for completing the inquiry is barred by limitation or is liable to be dismissed on the ground of delay or laches – It is settled that in a situation where no limitation stands provided either by specific applicability of the Limitation Act or by the special statute governing the dispute, the

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Trial Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay – When no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation – No limitation as an absolute rule could be provided in such matters and it depends upon the facts and circumstances of each case whether the proceedings have been initiated in a fairly reasonable time – In the instant case, the two Courts below having held that the proceedings are not barred by limitation and that actually the proceedings are not in the nature of a fresh proceedings, rather than a continuation of the old suit in the form of a preparation of the final decree – No fault can be found in the said decisions. [Paras 12, 13, 15, 16, 17]

Case Law Cited

Kattukandi Edathil Krishnan and Anr. v. Kattukandi Edathil Valsan and Ors. [\[2022\] 7 SCR 1120](#) : (2022) 16 SCC 71 : AIR Online 2022 SC 2841; *M/s. North Eastern Chemicals Industries (P) Ltd. & Anr. v. M/s. Ashok Paper Mill (Assam) Ltd. & Anr.* [\[2023\] 15 SCR 821](#) [C.A.No. 2669 of 2013, dated 11.12.2023 passed by the Supreme Court] – referred to.

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Order XX Rule 12 of Code of Civil Procedure, 1908; Mesne profits; Determination of mesne profits; Limitation; Inquiry regarding mesne profits; Continuation of old suit; Preparation of final decree; Reminder for completing inquiry.

Case Arising From

EXTRA-ORDINARY APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 3056 of 2023

From the Judgment and Order dated 22.07.2022 of the High Court of Karnataka at Kalaburagi in CRP No. 200017 of 2022

Appearances for Parties

C. Nageswara Rao, Sr. Adv., Vikram Hegde, Chitwan Sharma, Advs. for the Petitioners.

Ameet Deshpande, Sr. Adv., Akshat Shrivastava, Satvic Mathur, Advs. for the Respondent.

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Heard learned senior counsel for the parties.

The challenge in the present special leave petition is to the revisional order dated 22nd July, 2022 passed by the High Court dismissing the revision of the petitioners arising from the rejection of their application alleged to have been filed under Order VII Rule 11(d) of the Code of Civil Procedure, 1908 (for short, 'C.P.C.').

A suit for recovery of possession and for correction of mutation entries was filed by the respondents in the year, 1963 and it was decreed on 12.07.1973. The said judgment, order and decree specifically directs for holding an inquiry regarding mesne profits from the date of the suit i.e., 24.09.1963 in accordance with Order XX Rule 12, C.P.C. The aforesaid judgment, order and decree of the Court of first instance attained finality with the dismissal of the appeal filed by the petitioners in the year, 1980.

The respondents applied for the execution so as to obtain possession of the suit land sometime in the year, 1993 and after going through the entire exercise of execution, issuance of warrant for possession, the respondents were put into possession of the suit land property in the year, 2005.

It appears that sometime in 2014, an application purported to be under Section 141 C.P.C. or under Order XX Rule 12 C.P.C. was filed by the respondents for the determination of the mesne profits as directed by the judgment, order and decree dated 12.07.1973. Once such an application was filed, the petitioners moved application under Order VII Rule 11(d) C.P.C. contending that such an application is hopelessly barred by limitation and as such, it should be rejected outright.

The aforesaid application filed under Order VII Rule 11(d) C.P.C. was rejected by the Trial Court and the revision thereof also met the same fate at the hands of the High Court. Thus, the Special Leave Petition.

Learned counsel for the petitioners has argued that the application allegedly moved by the respondents for an inquiry for mesne profits is in the nature of a second execution and since, it has been filed

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decades after the decree has attained finality, it is liable to be dismissed on the ground of limitation.

Learned counsel for the respondents on the other hand contends that the aforesaid application is not in a nature of a second execution or in the form of a fresh suit or a plaint, rather it is only a reminder to the Court to complete the process of inquiry with regard to determination of mesne profits as has been directed by the Court of first instance vide judgment and order dated 12.07.1973. The said proceedings are actually proceedings under Order XX Rule 12 C.P.C. wherein the Court is obliged to hold an inquiry with regard to determination of the mesne profits from the date of institution of the suit and till the delivery of the possession.

Admittedly, the said inquiry has not been conducted and completed and that the law nowhere provides for any specific time limit for initiation of such proceedings rather the Court is obliged to undertake this exercise on its own.

In Kattukandi Edathil Krishnan and Anr. Vs. Kattukandi Edathil Valsan and Ors.,¹ the Court while dealing with the matter regarding a preliminary decree and the final decree in connection with the decree passed in a suit for partition opined that fundamentally there is a distinction between a preliminary and a final decree and that proceedings for final decree can be initiated at any point of time as there is no limitation for initiation of such proceedings. Either of the parties to the suit can move an application for preparation of the final decree or the Court may take action in this regard *suo moto*. In fact, after the passing of the preliminary decree, the Trial Court is obliged to proceed for the preparation of the final decree and should not adjourn the matter *sine die*. There is no need to file any separate application for the preparation of the final decree.

The aforesaid analogy with regard to the preparation of the final decree pursuant to the preliminary decree for partition can very well be applied to the cases where a decree is passed with a direction to hold an inquiry with regard to determination of mesne profits. This is evident from the plain reading of Order XX Rule 12 C.P.C. For the sake of convenience, Order XX Rule 12 C.P.C. is reproduced herein below:-

1 [2022] 7 SCR 1120 : 2022 (16) SCC 71 : AIR Online 2022 SC 2841

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“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.”

It is in the light of the aforesaid provision that the Court of first instance while passing the judgment and order dated 12.07.1973 had specifically stated as under: -

“An inquiry be held regarding future mesne profits of the said suit lands from the date of the suit, that is 24-9-1963 under Order 20 Rule 12(a) C.P.C.”

Now, such an inquiry is nothing but a continuation of the suit and is in the nature of preparation of the final decree and as such, it cannot be said that any application moved as a reminder for completing the inquiry is barred by limitation or is liable to be dismissed on the ground of delay or laches.

Learned counsel for the petitioners has placed reliance upon a recent decision of this Court in M/s. North Eastern Chemicals Industries (P) Ltd. & Anr. Vs. M/s. Ashok Paper Mill (Assam) Ltd. & Anr. passed in

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Civil Appeal No. 2669 of 2013 on 11th December, 2023 to contend that where no limitation is provided, steps ought to be taken for initiation of proceedings within a reasonable time and not decades later.

In the aforesaid relied upon decision, the Court has clearly stated that in a situation where no limitation stands provided either by specific applicability of the Limitation Act or by the special statute governing the dispute, the Trial Court must undertake a holistic assessment of the facts and circumstances of the case to examine the possibility of delay. When no limitation stands prescribed, it would be inappropriate for a Court to supplement the legislature's wisdom by its own and provide a limitation.

In view of the aforesaid decision also, no limitation as an absolute rule could be provided in such matters and it depends upon the facts and circumstances of each case whether the proceedings have been initiated in a fairly reasonable time.

The two Courts below having held that the proceedings are not barred by limitation and that actually the proceedings are not in the nature of a fresh proceedings, rather than a continuation of the old suit in the form of a preparation of the final decree, we cannot find fault with the said decisions. We are not inclined to grant any indulgence in the matter. The present petition is, accordingly, dismissed.

The petitioners are set at liberty to participate in the inquiry before the Trial Court in so far as the determination of mesne profits are concerned.

Pending application(s), if any, shall stand disposed of.

Result of the case: Petition dismissed.

[†]*Headnotes prepared by:* Ankit Gyan