

Shivaji Vs. Deoji and ors.

Shivaji Vs. Deoji and ors.

SooperKanoon Citation : sooperkanoon.com/498709

Court : Madhya Pradesh

Decided On : Sep-08-1972

Reported in : AIR1974MP123; 1973MPLJ434

Judge : S.P. Bhargava and ;S.R. Vyas, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 20, Rule 12; [Court Fees Act, 1870](#) - Sections 7

Appeal No. : Civil Revn. Nos. 41 of 42 of 1971

Appellant : Shivaji

Respondent : Deoji and ors.

Advocate for Def. : G.M. Chafekar, Adv.

Advocate for Pet/Ap. : S.D. Sanghi, Adv.

Judgement :

S.R. Vyas, J.

1. This opinion will also govern the disposal of Civil Revn. No. 42 of 1971 (Shivji v. Chunnilal and Ors.).

2. Facts giving rise to the present revision application which has been referred to this Bench, may briefly be stated as thus:--

Opponents 1, 2 and 3 (hereinafter referred to as the plaintiffs) instituted a suit for possession and mesne profits in respect of some agricultural lands against the applicant and opponents 4 to 8 (hereinafter referred to as the defendants). In this suit a decree for Rs. 700.00, claimed as mesne profits upto the date of suit for one year, future mesne profits at the rate of Rs. 700/- per annum and for possession was passed. The applicant feeling aggrieved with this decree preferred an appeal in the Court of the Additional District Judge. On the memorandum of this appeal he paid court-fees only on the decretal amount of mesne profits claimed upto the date of the suit and did not pay court-fees on that amount of mesne profits for which a decree was passed against him in respect of the period from the date of suit till the date of appeal.

3. On an objection being raised by the respondents about the adequacy of the court-fees on the memorandum of the appeal, the learned Additional District Judge relying on *Shobharam v. Ranchhod*, (1965 Jab LJ (SN) No. 4) ruled that the appellant should pay court-fees on the decretal amount of mesne profits which had become due from the date of suit upto the date of the appeal.

4. A similar order was passed in another appeal before the same learned Additional Sessions Judge. Against the order passed in Civil Regular Appeal No. 50-A of 1966 on 1-1-1971, Civil Revision No. 41 of 1971 has been filed in this Court. Civil Revision No. 42 of 1971 is directed against the similar order passed in Civil Regular Appeal No. 51-A of 1966 on 1-1-1971.

5. Both these revision applications were heard by Hon'ble Oza J. before whom the view taken by the learned Additional District Judge, Dhar on the authority of *Shobharam v. Ranchhod*, (1965 Jab LJ (SN) No. 4) was challenged by the applicant and supported by the non-applicant on the authority of some cases decided by this Court. Some of the cases, to which we shall shortly refer to, take the view that in such cases defendant appealing against a decree for possession and mesne profits, past and/or future, must pay court-fees on the total amount of mesne profits, inclusive of future mesne profits, decreed by the trial Court and which became due under the decree upto the date of appeal. The other cases, however, took the contrary view and held that irrespective of the fact that a decree

for future profits has been passed, without any enquiry contemplated by Order 20, Rule 12, Civil Procedure Code, the defendant is not required to pay court-fees on that decretal amount of mesne profits which became due subsequent to the date of suit upto the date of appeal. In view of these conflicting decisions, Hon'ble Oza J. made a reference to the Hon'ble the Chief Justice for an opinion by a larger Bench. Hon'ble the Chief Justice has referred the two cases to this Bench for resolving the conflict.

6. Shri S.D. Sanghi, learned counsel for the applicant, contended that when a suit is instituted for possession and past mesne profits the plaintiff has to value his claim in suit on the claim for possession and past mesne profits only and pay court-fees on such valuation only; that he is neither required to value nor pay the court-fees on his claim for future mesne profits for which he has no existing legal right and cause of action on the date of suit and that in such an event the plaintiff cannot be required to pay court-fees on his claim for future mesne profits. It was further contended that if, at the conclusion of the trial of a suit in which, besides the relief of possession and past profits, a decree for future mesne profits is passed without the enquiry contemplated by the provisions of Order 20, Rule 12, Civil Procedure Code, then defendant, in an appeal against such a decree, cannot be called upon to pay court-fees on that decretal amount of mesne profits which has accrued due after the date of decree and upto the date of appeal. Shri Sanghi in support of his contention relied on *State of Maharashtra v. Mishrilal*, (AIR 1964 SC 457), *Dindayal v. Ambikaprasad*, (1965 Jab LJ (SN) No. 56), *Shyamlal v. Chhiddi*, (1965 Jab LJ (SN) No. 35), *Mst. Occhibai v. Jagdamba Prasad*, (1970 Jab LJ (SN) No. 44), *Maddanppa v. Chandramma*, (AIR 1965 SC 1812), and *Gopalakrishna Pillai v. Meenakshi Aval*, (AIR 1967 SC 155).

7. Shri G.M. Chafekar, learned counsel for the opponents, however, contended that once a decree for future mesne profits prayed for in the plaint is passed or refused by the trial Court, then in the event of an appeal, whether by a successful plaintiff or an unsuccessful defendant, court-fees on the claim for future mesne profits from the date of suit till the date of appeal must be paid. His further contention was that once the claim for future mesne profits is adjudicated and determined by the decree, the unsuccessful party appealing against such a decree

must value the decreed or dismissed claim from the date of suit till the date of appeal. It was also contended that when a plaintiff sues for past as well as future mesne profits, the claim for past mesne profits is based on a legal right for which he has a cause of action on the date of the suit and the claim for future mesne profits is also based on an existing legal right but for the investigation of the same a different procedure has been prescribed. The next contention was that when the suit is for possession only no decree for future mesne profits can be passed even by the procedure pre-scribed by Order 20, Rule 12, Civil Procedure Code. Reliance in support of these contentions was placed on Mohd. Amin v. Vakil Ahmad, (AIR 1952 SC 358), Chacko v. Varghese, (AIR 1955 Trav-Co 167), P. Nahako v. Emperor, (AIR 1927 Mad 360), Kedar Nath Goenka v. Chandra Mauleshwar, (AIR 1932 Pat 228), Dhanukdhari v. Ramadhikari, (AIR 1933 Pat 81), Sideshwari v. Ram Kumar, (AIR 1933 Pat 234), In re Kudappa Subbamma, (AIR 1957 Andh Pra 6), Sinnapappal v. Subbana, (AIR 1958 Mad 414), Sobharam v. Ranchhod, (1965 Jab LJ (SN) No. 4), Shyamlal v. Chhiddi, (1965 Jab LJ (SN) No. 35) and Premchand v. Shrinarain, (Second Appeal No. 137 of 1963, D/- 12-9-1963 (Madh Pra) decided by Hon'ble Nevaskar, J. as taxing Judge).

8. We have examined the provisions of the Code of Civil Procedure and the Court-Fees Act which are relevant on the subject and are of the view that the decisions of this Court taking the view that in an appeal against a decree allowing or disallowing a claim for future mesne profits without any investigation under Order 20, Rule 12, Civil Procedure Code the party appealing against such a decree is not required to pay court-fees on that claim which represents mesne profits which have accrued due after the date of the suit till the date of the appeal.

9. It was not disputed that so far as the claim for possession and past mesne profits is concerned, the plaintiff, on the date of the suit, has an existing legal right and has both to value the two reliefs and pay court-fees according to the valuation made by him in the plaint. However, so far as the claim for future mesne profits is concerned the plaintiff neither has any cause of action nor any existing legal right on the date of suit. 'Mesne profits' have been defined by Section 2(12) of the Civil Procedure Code as under :

' '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.'

The very definition of the words 'mesne profits' as reproduced above will show that a claim for mesne profits can fall in any one of the following two categories viz.:--

(i) Profits actually received while in wrong possession; and

(ii) Profits, which might, with ordinary diligence have been received while in wrongful possession.

When a suit for possession and past mesne profits is instituted against a person in wrongful possession the plaintiff can, with certainty, assert that the defendant in wrongful possession is answerable for the actual or the probable profits of the subject-matter of the suit viz. the property for the possession of which, a decree is sought by him. In such a suit the plaintiff has an existing legal right and cause of action against the defendant so far as past mesne profits are concerned. The value of such profits, being ascertained either on facts or reasonable calculation, can be and has to be made both for the purposes of court-fees and jurisdiction also. In such a suit there is no difficulty regarding the payment of court-fees.

10. When in a suit, of the nature referred to in the preceding paragraph, the plaintiff also makes a prayer that future mesne profits may also be decreed at the rate at which past mesne profits are claimed, from the date of suit till possession is restored to him, questions arise as to whether the plaintiff has any existing legal right and cause of action on the date of suit and also as to whether he is bound to value such a right for the purposes of court-fees and jurisdiction. The only answers which can be given are that in such a suit neither the plaintiff has any asserted or disputed or legal right to his claim for future mesne profits nor he is required to value the same either for the purpose of court-fees or for the purpose of jurisdiction.

11. A claim for future mesne profits for the period subsequent to the date of suit is dependent on the defendant being or continuing to be in wrongful possession of the property in suit. It is also dependent on the property in suit remaining in existence till the suit is tried and the plaintiff is declared to be entitled to its possession. The period during which the plaintiff may be out of possession, the amount of profits for which the defendant may be answerable and the continued existence of the subject-matter of a suit being all uncertain on the date of suit, are factors which make it impossible for a plaintiff to value his claim for future mesne profits. To illustrate our point, take the case where the suit is for the possession of a house. After the date of the suit the defendant may be forcibly dispossessed by a third party, He may voluntarily relinquish possession. The whole or a part of the house may be destroyed by an act of God. There may be a number of causes, not attributable either to the defendant or his reasonable diligence, which may affect the quantum of actual or probable profits. With all these possibilities present it is obvious that it is impossible for the plaintiff to make even an approximate guess at mesne profits which may accrue before his suit is determined. If the plaintiff is on the date of suit, asked to value such a claim for future mesne profits then it would mean that he must state in the plaint the approximate amount of mesne profits on some imaginary basis. The plaintiff in such circumstances cannot be treated as having any existing legal right for his claim for future mesne profits on the date of suit.

12. In this connection we may usefully refer to *Basavayya v. Guravayya*, (AIR 1951 Mad 938 (FB)) where relying on *Fakharuddin Mahommed Ahsan v. Official Trustee of Bengal*, ((1882) ILR 8 Cal 178 (PC)) it was said that:--

'When the Legislature has expressly empowered the Court to grant relief for future mesne profits, that is to say, in respect of a cause of action arising subsequent to the suit, there is no reason to circumscribe this power by importing a qualification that there must have been a specific prayer in the plaint for the recovery of such unascertainable and unpredictable profits. Future mesne profits could, we think, well be awarded as part of the general relief to which a plaintiff is entitled.'

Similar was the view taken in *Bidyadhar Bachar v. Manindra Nath Das*, (AIR 1925 Cal 1076 (FB)) and *Girja Kuer v. Shiva Prasad*, (AIR 1935 Pat 160).

13. It was precisely to avoid such an impossible and imaginary situation that the Legislature, while making provision for payment of court-fees on the claim for past mesne profits made no specific provision either for the valuation of the claim for future mesne profits or payment of any court-fee on such a claim even if asserted in the plaint and decreed by the defendant. Even in such cases where the decree awards future mesne profits, the decree-holder cannot execute the decree unless he pays the court-fees on the amount of future mesne profits (vide Section 11, Court-Fees Act),

14. Similarly for precise reasons suitable provision was made in Order 20, Rule 12, Civil Procedure Code to investigate and determine the claim for future masne profits and for passing a final decree in favour of the plaintiff in case he was to succeed in establishing his claim for possession of property which is found in wrongful possession of the defendant.

15. These enabling provisions of Order 20, Rule 12, Civil Procedure Code were made for the specific reason that the plaintiff having been granted a decree for past mesne profits and possession need not be driven to a separate suit for the relief of future mesne profits from the date of suit till delivery of possession and that such a claim could be investigated and determined by the very court which passed the decree and which could execute it.

16. To maintain that a claim for future mesne profits is based on an asserted but disputed legal right existing on the date of suit would mean that such a right is claimable on some totally uncertain, unpredictable and unascertainable events which may or may not happen. We have already illustrated such uncertainty and unascertainability in the preceding paragraph No. 11 of this order.

17. We may refer to some cases on which we rely for the view taken above. The latest pronouncement on the subject is *Gopalakrishna Pillai v. Meenakshi Aval*, (AIR 1967 SC 155) when the view taken in *Basavayya v. Guravayya* (AIR 1951 Mad 938 (FB)) and *Fakharuddin Mahomed Ahsan v. Official Trustee of Bengal*,

((1882) ILR 8 Cal 178) (PC) was approved and it was held that:--

'Order 20, Rule 12 enables the Court to pass a decree for both past and future mesne profits but there are important distinctions in the procedure for the enforcement of the two claims. With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of Order 7, Rules 1 and 2. Order 7, Rule 7 of the Code of Civil Procedure and Section 7(1) of the Court-Fees Act, the plaintiff must plead this cause of action, specifically claim a decree for the past mesne profits, value the claim approximately and pay court-fees thereon. With regard to future mesne profits the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay court-fees thereon at the time of the institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of Order 20, Rule 12 apply. But in a suit to which the provisions of Order 20, Rule 12 apply, the Court has a discretionary power to pass a decree directing an enquiry into the future mesne profits, and the Court may grant this general relief, though it is not specifically asked for in the plaint'. (Underlining is ours).

The decisions given in (AIR 1951 Mad 938 (FB)) and ((1882) ILR 8 Cal 173 (PC)) were earlier approved by the Supreme Court in (AIR 1965 SC 1812). We have already referred to the decisions in (AIR 1925 Cal 1076 (FB)) and (AIR 1935 Pat 160) where it was held that with future mesne profits the plaintiff has no existing legal right and cause of action on the date of suit. Similar is the view of the Andhra Pradesh High Court in Atchamma v. Rami Reddi, (AIR 1958 Andh Pra 517) which was approved by their Lordships of the Supreme Court in Gopalakrishna Pillai's case, AIR 1967 SC 155 (supra).

18. Now we propose to consider those cases the conflicting decisions of which have given rise to this reference.

19. In (1965 Jab LJ (SN) No. 4), Hon'ble Nevaskar, J. took the view that when a suit for possession and mesne profits is dismissed, the plaintiff in an appeal against the decree dismissing his claims for possession and mesne profits, should pay court-fees on the value of the claim for mesne profits in respect of the period

from the date of suit till the date of the decision appealed against. While taking this view Hon'ble Nevaskar, J. was following his own view taken in (Second Appeal No, 137 of 1963, D/- 12-9-1963 (Madh. Pra.)) and relied upon (AIR 1955 Trav-Co 167). He did not feel inclined to reconsider his earlier view in the light of the decision of the Supreme Court in (AIR 1964 SC 457) as in his opinion the question relating to costs and future interest awardable under Sections 34 and 35 of the Civil Procedure Code decided by the Supreme Court was distinct and clearly distinguishable from the question of mesne profits claimed for the period subsequent to the date of suit and upto the date of appeal. It was also held that the award of costs and interest was within the discretion of the court irrespective of the fact that they were or were not claimed by the plaintiff and that so far as future mesne profits were concerned there was no provision in the Code of Civil Procedure which could award such future mesne profits irrespective of the fact that the plaintiff asks for them or not. Further relying on (AIR 1952 SC 358) it was held that in the absence of a specific prayer made by the party for such mesne profits the Court has no power to award the same and that future mesne profits could not be awarded in the same way as costs of the suit and interest.

20. In AIR 1955 Trav-Co 167 on which reliance was placed by Hon'ble Nevaskar, J. for the view taken by him in (1965 Jab LJ (SN) No. 4), it was no doubt held that when an unsuccessful plaintiff claims future mesne profits in a suit and the suit is dismissed he in an appeal against this decree, is required to pay court-fees from the date of suit till the date of appeal. This view was taken in the light of the special provisions of Section 4 of the Court-Fees Act of 1125 (applicable in Travancore-Cochin only). In spite of this provision it was held in paragraph 6 that the appeal however, need not be dismissed for the defect in payment of the court-fee and that it was open to the Court to give a decree to the plaintiff for the mesne profits claimed by him subject to the condition that he will be allowed to realise the additional amount only on payment of the necessary court-fee. It would thus appear that even in this case, followed by Hon'ble Nevaskar J., it was not laid down as an unconditional rule of law that when either a plaintiff or a defendant appeals against a decree passed in a suit, where future mesne profits were claimed, the appeal cannot be heard unless court-fees on . future mesne profits, decreed or refused by the trial Court, are paid. When enquiry in respect of future

mesne profits is made under the provisions of Order 20, Rule 12, Civil Procedure Code and the plaintiff succeeds the decree passed at the conclusion of such enquiry would become executable only subject to the condition of payment of court-fees under Section 11 of the Court-Fees Act.

21. Another decision referred to by Hon'ble Oza J. is (1970 Jab LJ (SN) No. 44) in which Hon'ble Golvalkar J. relying on (AIR 1964 SC 457) took the view that future mesne profits from the date of suit did not form part of the subject-matter of the appeal in the appellate Court and that in an appeal from the decree determining the question of future mesne profits court-fees are not payable. (1965 Jab LJ (SN) No. 4), Shyam Lal v. Chhiddi, (1965 Jab LJ (SN) No. 35) and (1965 Jab LJ (SN) No. 56) were also cited before Hon'ble Golvalkar J. but he was of the view that as the law laid down by their Lordships of the Supreme Court had already been accepted in the later two decisions cited before him and as the view expressed by the Supreme Court squarely applied to the case before him, he did not feel inclined to refer the case before the larger Bench.

22. The facts in (1965 Jab LJ (SN) No. 35) were that the trial Court had granted a decree both for arrears of rent and ejectment. In the first appeal, the decree was confirmed. The tenant then filed a second appeal in which he did not challenge the arrears of rent nor the decree for mesne profits. The tenant paid court-fees only on the subject-matter of the suit for ejectment. An objection was raised by the landlord that court-fees were payable on the arrears of rent as well as future mesne profits even though the defendant had challenged the decree for ejectment only. On these facts it was held by Hon'ble Sen J. that an unsuccessful tenant against whom there is a decree for mesne profits in addition to ejectment, can challenge both and if he challenges the grant of mesne profits or its rate there is no doubt that he should pay court-fees upto the stage of filing the appeal. It was further held that if the tenant challenges only the decree for ejectment he should pay court-fees on the relief of ejectment only.

23. In (1965 Jab LJ (SN) No. 56), the facts were that the trial Court had passed a decree for eviction and arrears of rent and also for future mesne profits at the specified rate. The decree directed that the plaintiff would be required to pay court-

fees on the mesne profits pendente lite. When the defendant appealed the appellate Court directed the appellant to pay court-fees on the value of the damages for use and occupation from the date of the institution of the suit, to the date of the presentation of the appeal. On these facts it was held that no court-fee was payable in the appellate Court on the amount of mesne profits which accrued due pendente lite when it is consequential upon the main relief granted in the decree appealed from, but where the appellant resists his liability to pay mesne profits notwithstanding the main relief granted against him or disputes the quantum of mesne profits, court-fees is also payable. On the amount of mesne profits in dispute.

24. The last case referred to is Mohan v. Girdhar (Second Appeal No. 139 of 1969, D/- 24-9-1970 (Madh. Pra)) where Hon'ble Krishnan J. took the following view:--

'I would accordingly decide, firstly, that court-fees should be paid on new element of mesne profits in this case; and secondly, the conflict between the different rulings mentioned above is only apparent and accordingly there is no occasion for a reference to a larger Bench.'

25. It was in the light of these decisions taking different views that the matter has been referred to this Bench. According to the view taken in 1965 Jab LJ (SN) No. 4 (supra) and 1965 Jab LJ (SN) No. 35 (supra), a defendant appealing against a decree granting ejectment, past mesne profits and future mesne profits, has to pay court-fees on the amount of such mesne profits which have become due from the date of the suit till the date of the presentation of an appeal. As against this view, the view taken in 1970 Jab LJ (SN) No. 44 (supra) is that in such a case no court-fees is payable--whether the appeal be by an unsuccessful plaintiff or an unsuccessful defendant.

26. So far as the decision given in 1965 Jab LJ (SN) No. 4 (supra) by Nevaskar J. is concerned, it proceeds on the assumption that future mesne profits cannot be granted to a plaintiff in the absence of specific prayer made by him and if no prayer is made for the grant of future mesne profits the Court has no power to award such mesne profits in the same way in which costs of the suit and interest pendente lite could be awarded by the Court under Sections 34 and 35 of the Civil

Procedure Code. For taking this view, main reliance was placed on the decision in (AIR 1952 SC 358) where their Lordships of the Supreme Court have held that since the plaintiff did not claim mesne profits in the plaint the Court could not award them. This decision was considered again in (AIR 1965 SC 1812) and (AIR 1967 SC 155). In Maddanappa's case, AIR 1965 SC 1812 (supra) their Lordships while approving the view taken in (AIR 1951 Mad 938 (FB)) and ((1882) ILR 8 Cal 178 (PC)) which we have already referred to above, observed in paragraph 18 (at page 1817):

'..... When a suitable occasion arises it may become necessary to reconsider the decision of this Court as to future mesne profits.'

Their Lordships were obviously referring to their earlier decision in (AIR 1952 SC 358). This case was again reconsidered in Gopalakrishna Pillai's case, AIR 1967 SC 155 (supra) and it was observed that when the suit is for the recovery of possession of immovable property and for past mesne profits the Court had ample power to pass a decree directing an enquiry as to the future mesne profits, though there is no specific prayer for the same in the plaint. Their Lordships also approved of the decisions given in Rachepalli Atchamma v. Yerragunta Rami Reddi, (AIR 1958 Andh Pra 517). In the light of these two later decisions of their Lordships it would now be held as settled that when a suit for possession and past mesne profits is decreed the Court has statutory power to grant future mesne profits, that is, mesne profits which may become due after the date of institution of the suit in accordance with the provisions of Order 20, Rule 12, Civil Procedure Code irrespective of the fact that such future mesne profits have or have not been claimed by the plaintiff in the plaint.

27. Accordingly the basis on which Hon'ble Nevaskar J. decided the case of Shobharam v. Ranchhod 1965 Jab LJ (SN) No. 4 (supra) cannot be made applicable to the case before us. We have already held above that so far as the claim for mesne profits pendente lite is concerned, the plaintiff has neither an existing legal right nor a cause of action on the date when he institutes a suit for eviction and past mesne profits and that even if future mesne profits are claimed in the plaint, the plaintiff is neither required to make any valuation of such a claim nor

pay any court-fees on it. This view taken by us is based on *Gopalkrishna Pillai's* case. AIR 1967 SC 155 (supra) where it has been specifically held that with regard to future mesne profits the plaintiff has no cause of action on the date of the institution of the suit, and it is not possible for him to plead this cause of action or to value it or to pay court-fees at the time of the institution of the suit. In the light of the authoritative pronouncement of Their Lordships of the Supreme Court the question now must be treated as concluded so far as the question of court-fees on the claim for future mesne profits is concerned. The view taken in AIR 1951 Mad 938 (FB) and in the Privy Council case of *Fakharuddin Mahomed Artisan v Official Trustee of Bengal* ((1882) ILR 8 Cal 178 P. C.) was approved by Their Lordships of the Supreme Court in *Gopalkrishna Pillai's* case. AIR 1967 SC 155 (supra). The view of Their Lordships of the Madras High Court in (AIR 1951 Mad 938 (FB)) was that a relief for future mesne profits, which are unascertainable and unpredictable on the date of the suit, can be awarded as a part of general relief to which the plaintiff may be found entitled to in spite of the fact that there is no specific prayer in the plaint for the recovery of such future mesne profits. In the light of these decisions which have been approved by Their Lordships of the Supreme Court we must hold that so far as the trial Court is concerned the plaintiff is not required either to specifically claim or pay any court-fees on the amount of mesne profits which may be calculated on any approximation by the plaintiff.

28. Some of the decisions of this Court, which we have already referred to earlier, have taken the view that once a decree for future mesne profits, in addition to a decree for past mesne profits and ejectment, is passed or refused without any enquiry under Order 20 Rule 12. Civil Procedure Code then the unsuccessful defendant or the plaintiff can on the date he files an appeal against such a decree, calculate with certainty as to the quantum of mesne profits allowed or disallowed by the trial Court and in that event he must pay court-fees on such allowed or disallowed amount of mesne profits. We do not feel inclined to accept this view in the light of the decision of the Supreme Court which we have already referred to in the earlier part of this opinion.

29. Once the subject matter of a suit has been properly valued for the purposes of court-fees, then such valuation continues to be the proper valuation for the

purposes of subsequent appeal also. In the cases of the nature before us such valuation cannot fluctuate on account of the relief of future mesne profits being allowed or disallowed. We are fortified in our opinion by the Full Bench decision of this Court in *Ramsahav v. Kanhaiyalal*, (AIR 1937 Nag 295 (FB)). The facts of this case were that a mortgagor instituted a suit for redemption with a claim for surplus profit, if any, found due on taking accounts. In the original Court, court-fees were paid on the principal sum secured by the mortgage and on Rs. 500/- which was the tentative value for surplus profits. The suit resulted in a final decree for redemption and surplus profits amounting to Rs. 40,652/13/. The mortgagee then appealed and paid court-fees on the principal sum secured by the mortgage and on a tentative valuation of the surplus profits (which was much less than that decreed by the trial Court). A question arose as to whether the appellant was required to pay court-fees on the full amount of surplus profits decreed by the trial Court. This question, on a reference to a Full Bench, was answered as follows:--

'The value of a particular relief, once correctly found for the purpose of stamping a plaint in a suit, remains unchanged in all subsequent stages of the lis. If the relief sought in the claim is the same as the relief sought in appeal, the court-fee payable on appeal is the same. Further we are of the opinion that as was decided in *Dhirajsingh v. Rajaram*, ((1910) 6 Nag LR 164), the value of a particular relief in appeal remains constant whether the appeal be against its grant or its refusal by the lower Court. Any other view would result in great confusion in assessing court-fees on appeals and would result in quite different court-fees being payable in exactly similar disputes according as the plaintiff or the defendant was the appellant. The nature of the dispute is not changed in appeal but remains the same *Hafiz Ahmad v. Sobha Ram* ((1884) ILR 6 All 488) *Mahomedali Sheikhi Ibrahimji Horaji v. Akbarali Badruddin* (AIR 1935 Bom 69) and *Surain Singh v. Sundar Singh*, (AIR 1929 Lah 879). In view of the above considerations and the cases referred to in the reference, we answer the question put in the affirmative.'

30. When in the instant case the defendant appealed against the decree of the trial Court granting the relief of past mesne profits, ejectment and future mesne profits, he no doubt challenged in his appeal the correctness of all the three reliefs awarded to the plaintiff. The entire basis for the relief of mesne profits--past as well

as future--was the relief of ejectment granted to the plaintiff. Thus, the relief of ejectment was the basis of the whole suit. If the correctness of that part of the decree by which the decree of ejectment is allowed was itself challenged then the challenge automatically extended to those parts of the decree also by which the reliefs of past as well as future mesne profits were awarded. If the plaintiff was not required to put any valuation on the relief of future mesne profits and pay court fees thereon in the plaint then certainly in the event of a decree being granted in favour of the plaintiff for past as well as future mesne profits the defendant cannot be required to pay any court-fees on such mesne profits which may have been decreed by the trial Court. The view that the valuation of the subject matter of the suit should remain constant and not fluctuating has been taken in the Full Bench decision of this Court in Ramsahay v. Kanhaiyalal (AIR 1937 Nag 295 (FB)). which we have already referred to above. In the case before us the defendant-applicant had challenged the decree for possession. If he is to succeed the claim for mesne profits, past as well as future, automatically stands dismissed. If on the contrary, the plaintiff succeeds his claim for future mesne profits can be determined under Order 20 Rule 12, Civil Procedure Code and if decreed in his favour then he shall be liable to pay court-fees before recovering them from the defendant (vide Section 11. Court-Fees Act).

31. Consequently for the reasons given above, our opinion on the question referred to this Bench is as follows:--

'If in a suit for past mesne profits, and possession the plaintiff also prays for a decree for future mesne profits then he is neither required to value the relief of future mesne profits nor pay any Court-fees thereon as in such cases he has no existing legal right to claim such future mesne profits and has no cause of action for them on the date of suit. Further, in our opinion, when in such a suit, in which a prayer for future mesne profits is also made, the Court either decrees or refuses to grant future mesne profits, then in the event of an appeal either by the defendant or by the plaintiff court-fees on such mesne profits which may have become due from the date of suit till the date of appeal are not payable.'

32. Since the facts and the question referred to for decision in Civil Revn. No. 42 of 1971 (Shivji v. Chunnilal) are the same, this opinion will also be our opinion in that case also.

33. The records of both the cases will now be placed before the appropriate Bench for further necessary orders.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com