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Court : Madhya Pradesh

Decided On : Jan-17-1969

Reported in : AIR1969MP232; 1969MPLJ434

Judge : Shiv Dayal and ;R.J. Bhave, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 2, Rule 2 - Order 6, Rule 17 - Order 20, Rule 12

Appeal No. : First Appeal No. 20 of 1965

Appellant : Deepchand

Respondent : Sukhlal and ors.

Advocate for Def. : H.S. Ruprah, Adv.

Advocate for Pet/Ap. : G.C. Koshal, Adv.

Disposition : Application rejected

Judgement :

Bhave, J.

1. The appellant had filed the suit for partition and possession of 1/3rd share of the property left by one Mst. Rambhabai. No prayer for past mesne profits or future mesne profits was, however, made. In the relief clause a general relief was

claimed, to the effect that any other relief or reliefs which the Court may hold the plaintiff to be entitled to be decreed. The plaintiff now desires to amend the relief clause to the following effect:

'That any such other relief or reliefs which this Hon'ble Court may hold the plaintiff to be entitled to be decreed to him including profits or mesne profits by directing an enquiry under Order 20, Rule 12 C.P.C.'

2. This application is opposed by the respondents on the ground that a large part of the future mesne profits has already been barred by limitation. The amendment should not, therefore, be allowed at this stage.

3. In *Leach and Co. Ltd. v. Jardine Skinner and Co.* AIR 1957 SC 357 their Lordships held:

'It is no doubt true that Courts would, as a rule, decline to allow amendments, If a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it, if that is required in the interests of justice.'

The same principle was reiterated by their Lordships in *P.H. Patil v. K.S. Patil*, AIR 1957 SC 363. It was, however, emphasised in that case that the amendment must be necessary for the purpose of determining the real question in controversy between the parties. The amendment sought in this particular case is not necessary for the determination of the real question in controversy between the parties. It is for securing an additional relief, if the plaintiff succeeds in establishing the relief already prayed for.

4. A suit for mesne profits arising subsequent to the filing of the suit can be filed even during the pendency of the suit for possession and partition. The non-inclusion of the relief is not barred by Order 2, Rule 2, Civil Procedure Code-Under the circumstances, when the plaintiff had deliberately not claimed future mesne profits when the suit was originally filed, there is no justification for allowing the amendment after a substantial portion of the claim has been barred by limitation.

5. It is no doubt true that under Order 20, Rule 12, Civil Procedure Code, where a suit is for recovery of possession of immovable property and for rent or mesne profits, the Court has a discretion to pass a decree directing an enquiry as to rent or mesne profits from the 'institution of the suit till the delivery of possession to the decree-holder or the expiration of three years from the date of the decree, whichever event first occurs.

In *Mohd Amin v. Vakil Ahmad*, AIR 1952 SC 358, mesne profits were not specifically claimed. Prayer for awarding 'possession and occupation of the property together with all the rights appertaining thereto' was made. It was held by their Lordships that such a prayer did not include a claim for mesne profits and the grant of mesne profits by the Courts below was held to be improper. In *Gopalakrishna Pillai v. Meenakshi Aval* AIR 1967 SC 155, their Lordships, while discussing the provisions of Order 20, Rule 12, and Order 7, Rules 1, 2 and 7, held:

'In view of Order 7, Rules 1, 2 and 7 of the Civil Procedure Code and Section 7(1) of the Court Fees Act, a plaintiff must plead his cause of action, specifically claim a decree for 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 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 in 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 discretionary power to pass a decree directing an enquiry into future mesne profits and the court may grant a general relief though it is not specifically asked for in the plaint.'

In that case, the decision in AIR 1952 SC 358 (*supra*) was cited. While explaining that case, their Lordships observed that the observations in *Mohd. Amin's* case, AIR 1952 SC 358 were applicable where the plaintiff claimed only declaration of title and recovery of possession of immovable property and made no demand or claim for either past or future mesne profits or rent, and that, in such a case, the Court could not pass a decree for future mesne profits under Order 20, Rule 12 of

the Code of Civil Procedure. But where the suit is for recovery of possession of immovable property and for past mesne profits, their Lordships held that the Court has ample power to pass a decree directing an enquiry as to future mesne profits, though there is no specific prayer for the same in the plaint. From these two decisions it is clear that where in a suit for possession past mesne profits are claimed, the Court has power to grant future mesne profits also; but where the party has failed to claim past mesne profits and the suit is only confined to the relief of declaration of title and possession of the property or partition, as in this case, no relief could be given to the plaintiff under Order 20, Rule 12, Civil Procedure Code. In this particular lease, no past mesne profits were claimed and the suit was only confined to a claim for partition and possession of 1/3rd share. It is thus clear that the amendment sought is not a formal amendment for a relief which the plaintiff was entitled to under the provisions of Order 20, Rule 12, Civil Procedure Code. By allowing the amendment of including the relief of future mesne profits the other side will be denied of the valuable plea of limitation which has accrued to it. In our view, the present case does not fall within the dicta laid down by their Lordships of the Supreme Court in AIR 1957 SC 357 (supra) and AIR 1957 SC 363 (supra).

6. For the aforesaid reasons, the application for amendment is rejected.