

-(1)- CR No. 673/2017
Bajranglal (dead) through LRs Mahila Draupadi and others
vs. State of MP & Another

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

(Single Bench)

Civil Revision No. 673/2017

Bajranglal (dead) through LRs
Mahila Draupadi and others PETITIONERS
Versus
Gajanand & Another RESPONDENTS

CORAM

Hon. Shri Justice Rajeev Kumar Shrivastava

Appearance

Shri Gaurav Mishra, learned counsel for the petitioners.
Shri Sunil Mittal learned counsel for the respondent No.1.
Shri K.P.S. Sengar, learned Panel Lawyer for the
Respondent No.2.

Reserved on : 12.07.2019

Whether approved for Reporting : Yes

Law laid down	Relevant paras
A decree providing for the ascertainment of mesne profits until delivery of possession of property should be so construed as to harmonise with the provisions of Order 20 Rule 12 (c)(iii). The Court, which made the decree, could not have contemplated that the date of recovery of possession	

<p>would pass the statutory period of three years laid down by Rule 12(c)(iii). Such decree should not be interpreted in a manner that would bring it into conflict with the statutory limitation imposed by the rule. It is to be read in the light of Order 20 Rule 12, CPC. If it is not within the competence of the Court to allow mesne profit for a longer period by reason of Order 20 Rule 12 CPC, then there is no justification in allowing the mesne profit for the period exceeding three years. While empowering a Court to determine mesne profits in interlocutory proceedings, without the necessity of filing a fresh suit, under Order 20 Rule 12 CPC, the Code has also placed a limitation on that power with regard to the period for which a decree for future profits could be given and so it is not competent for a Court to allow profits for a term exceeding three years. That being the real position, a Judge is expected not to act in disregard of the statutory provision contemplated under Order 20 Rule 12 CPC.</p>	<p>Para 9</p>
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ORDER
(Passed on 19th July, 2019)

This civil revision under Section 115 of CPC is preferred challenging the order dated 30.11.2017 passed by First Civil Judge Class-1, Sheopur in Execution Case No. 317/06 x 2000 (Gajananda vs. Goura), whereby the objection raised by the petitioners under Section 47 CPC has been rejected.

2. It is submitted by learned counsel for the petitioner that under Order 20 Rule 12 (c)(iii) of CPC, mesne profit can only be given by the judgment-debtor to the decree holder for the period of three years and not exceeding it. Therefore, the trial Court has erred in passing the impugned order dated 30.11.2017.
3. On the contrary, leaned counsel for the other side have supported the impugned order and prayed for dismissal of the civil revision.
4. Heard the learned counsel for the parties and perused impugned order.
5. The question for consideration is as to whether the mesne profit can be awarded under Order 20 Rule 12 of CPC ?
6. Order 20 Rule 12 CPC omitting the unnecessary portions runs as under :-

(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-

xx xx xx

(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.”

This the only provision, in the Code which allows mesne profits from the date of the institution of the suit up to the time of delivery.

7. The aforesaid provision has been the subject of judicial interpretation in many cases, such as, **Girish Chunder Lahiri v. Shoshi Shikhareswar tax [ILR 27 Cal 951]**, wherein, the decree, after declaring the plaintiffs' right to the property in dispute, recited that “he do get from the defendants khas possession of the same and mesne profits for the period of dispossession etc.” No doubt, the expression used was mesne profits, for the period of dispossession, indisputably, that is tantamount to mesne profits up to the date of possession. Their Lordships of the Privy Council rules that as this was more than three years from the date of the decree and to the extent of the excess, it was unauthorised by section 211 of the old Code. It is plain that the relief should be limited to three years notwithstanding the express terms of the decree that the plaintiff should get profits, until delivery of possession. This is clear authority in favour of the view that mesne profits could not be recovered for more than three years from the date of the decree. It is true that this decision was rendered under Section 211 of the old Code (Civil Procedure Code, 1882), which

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is the predecessor of Order 20 Rule 12(c), CPC. However, the position is the same even under the new Code.

8. Section 211 of Civil Procedure Code, 1882 reads as follows:

“When the suit is for the recovery of possession of immovable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or might the expiration of three years from the date of the decree (whichever event first occurs) with interest thereupon at such rate as the Court thinks fit.”

9. A decree providing for the ascertainment of mesne profits until delivery of possession of property should be so construed as to harmonise with the provisions of Order 20 Rule 12 (c)(iii). The Court, which made the decree, could not have contemplated that the date of recovery of possession would pass the statutory period of three years laid down by Rule 12(c)(iii). Such decree should not be interpreted in a manner that would bring it into conflict with the statutory limitation imposed by the rule. It is to be read in the light of Order 20 Rule 12, CPC. If it is not within the competence of the Court to allow mesne profit for a longer period by reason of Order 20 Rule 12 CPC, then there is no justification in allowing the mesne profit for the period exceeding three years. While

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empowering a Court to determine mesne profits in interlocutory proceedings, without the necessity of filing a fresh suit, under Order 20 Rule 12 CPC, the Code has also placed a limitation on that power with regard to the period for which a decree for future profits could be given and so it is not competent for a Court to allow profits for a term exceeding three years. That being the real position, a Judge is expected not to act in disregard of the statutory provision contemplated under Order 20 Rule 12 CPC.

10. On the basis of above discussion, it is clear that the mesne profit can only be awarded for the term three years and it is submitted that the mesne profit for the aforesaid period has already been deposited.

11. Resultantly, present civil revision is allowed. The impugned order dated 30.11.2017 is hereby set aside and the execution proceedings pending before the First Civil Judge Class-1, Sheopure in Execution Case No. 317x06x2000 (Gajananda vs. Goura) are hereby dismissed.

Let a copy of this order be sent to the concerning Executing Court for information.

(yog)

(Rajeev Kumar Shrivastava)
Judge.