

APHC010295082025



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3332]

PRESENT: THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

**CIVIL REVISION PETITION No.2246 of 2024
Along with
CIVIL REVISION PETITION No.1419 of 2025**

CIVIL REVISION PETITION NO: 2246/2024

Between:

- 1.LAKKARAJA MUNIRATHNAM, S/O L.C. NARASIMHULU, AGED ABOUT 70 YEARS, OCC-BUSINESS,
- 2.LAKKARAJA LAKSHMI, W/O L.MUNIRATHNAM AGED ABOUT 63 YEARS, OCC- BUSINESS,
- 3.LAKKARAJA MADHAVI, D/O L. MUNIRATHNAM AGED ABOUT 40 YEARS, OCC-BUSINESS,
- 4.LAKKARAJA GEETHANJALI, D/O L. MUNIRATHNAM AGED ABOUT 36 YEARS, OCC-BUSINESS, PETITIONERS NO. 1 TO 4 ARE RESIDING AT DWARAKA, PLOT NO.12, GHATIA VILLAGE ROAD, CHEMBUR, MUMBAI, 400071

...PETITIONER(S)

AND

- 1.K PRABHAKAR REDDY, S/O K.JAYARAM REDDY AGED ABOUT 56 YEARS, OCC- BUSINESS,
- 2.J SRINIVASA PRABAHAKAR, S/O J.G.D. MOORTHY AGED ABOUT 52 YEARS, OCC- BUSINESS,

3.T CHANDRASEKHAR, S/O SATHYAMOORTHY, AGED ABOUT 54 YEARS, OCC-BUSINESS,

4.A SRINIVASA RAO, S/O A.S.RARNAMOORTHY AGED ABOUT 53 YEARS, OCC- BUSINESS,

5.J RAMA SUBRAMANYAM, S/O J.G.D MOORTHY, AGED ABOUT 52 YEARS, OCC- BUSINESS, RESPONDENTS NO. 1 TO 5 ARE RESIDING AT 15TH WARD, KARNALA VEEDHI @ NETHAJI ROAD, TIRUPATI TOWN, TIRUPATI DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased tobeg to present this Memorandum of Civil Revision Petition aggrieved by the Docket Order dt 29-08-2024 made in O.S.No. 132 of 2016 on the file of the X Additional District Judge, Tirupati, Chittoor District

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be please to Suspend Docket Order dt.29-08-2024 in O.S.No. 132 of 2016 on the file of X Additional District Judge, Tirupati, Chittoor District pending disposal of the main C.R.P. and pass

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to extend the interim Orders in I.A.No. 01 of 2024 in CRP.No. 2246 of 2024 which were initially granted on 07.03.2025 and further extended the order until further orders and pass

Counsel for the Petitioner(S):

1.O UDAYA KUMAR

Counsel for the Respondent(S):

1.G V S MEHAR KUMAR

2.CHILUKURI KARTHIK

CIVIL REVISION PETITION NO: 1419/2025

Between:

1.K PRABHAKAR REDDY, S/O K JAYARAM REDDY, AGED ABOUT 56 YEARS, R/O. 15 WARD, KARNALA VEEDHI @ NETHAJI ROAD, TIRUPATI TOWN, TIRUPATI DISTRICT, A.P.

...PETITIONER

AND

1.LAKKARAJA MUNIRATHNAM, S/O L.C. NARASIMHULU, AGED ABOUT 70 YEARS, R/O DWARAKA, PLOT NO. 12, GHATIA VILLAGE ROAD, CHEMBUR, MUMBAI, 400071.

2.LAKKARAJA LAKSHMI, W/O L.MUNIRATHNAM, AGED ABOUT 63 YEARS, R/O DWARAKA, PLOT NO. 12, GHATIA VILLAGE ROAD, CHEMBUR, MUMBAI, 400071.

3.LAKKARAJA MADHAVI, D/O L. MUNIRATHNAM AGED ABOUT 40 YEARS, R/O DWARAKA, PLOT NO. 12, GHATIA VILLAGE ROAD, CHEMBUR, MUMBAI, 400071.

4.LAKKARAJA GEETHANJALI, D/O L. MUNIRATHNAM, AGED ABOUT 36 YEARS R/O DWARAKA, PLOT NO. 12, GHATIA VILLAGE ROAD, CHEMBUR, MUMBAI, 400071.

5.J SRINIVASA PRABAHAKAR, S/O J.G D. MOORTHY, AGED ABOUT 52 YEARS, R/O 15 WARD, KARNALA VEEDHI @ NETHAJI ROAD TIRUPATI TOWN, TIRUPATI DISTRICT, A.P.

6.T CHANDRASEKHAR, S/O SATHYAMOORTHY, AGED ABOUT 54 YEARS, R/O 15 WARD, KARNALA VEEDHI @ NETHAJI ROAD, TIRUPATI TOWN, TIRUPATI DISTRICT, A.P.

7.A SRINIVASA RAO, S/O A.S.RARNAMOORTHY, AGED ABOUT 53 YEARS, R/O 15TH WARD, KARNALA VEEDHI @ NETHAJI ROAD, TIRUPATI TOWN, TIRUPATI DISTRICT, A.P.

8.J RAMA SUBRAMANYAM, S/O J.G.D MOORTHY, AGED ABOUT 52 YEARS, 15TH WARD, KARNALA VEEDHI @ NETHAJI ROAD, TIRUPATI TOWN, TIRUPATI DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased to Petitioner begs to present this Civil Revision Petition against order dated 19.09.2022 in I.A. No. 113 of 2022 in O.S. No. 132 of 2016 on the file of X Additional District Judge, Tirupati

Counsel for the Petitioner:

1.G V S MEHAR KUMAR

Counsel for the Respondent(S):

1.SAI AKASH N

RESERVED ON 17.02.2026

PRONOUNCED ON 12.03.2026

UPLOADED ON 12.03.2026.

COMMON ORDER:

CRP No.2246 of 2024 is filed questioning the legality and correctness of the docket order dated 29.08.2024 passed in O.S.No.132 of 2016 by the learned X Additional District Judge, Tirupati, by the plaintiffs therein.

2. CRP No.1419 of 2025 is filed questioning the legality and correctness of the docket order dated 19.09.2022 passed in I.A.No.113 of 2022 in O.S.No.132 of 2016 by the learned X Additional District Judge, Tirupati, by the first respondent/first defendant.

3. For sake of convenience, the parties, hereinafter will be referred to as per their status before the trial Court.

4. The facts that led to filing of these Civil Revision Petitions, in brief, are that:

The plaintiffs filed the suit vide O.S.No.132 of 2016 on the file of the Court of the learned X Additional District Judge, Tirupati directing the defendants to pay the suit amount of Rs.1,65,00,000/- to them towards damagers for illegal use and occupation of the schedule mentioned premises after expiry of the lease period. They filed a petition vide I.A.No.113 of 2022 in the said suit under Order-6, Rule-17 CPC for amendment of the plaint for

including the relief “directing the defendants to pay the damages at the rate of Rs.12,96,000/- per month for unlawful use and occupation of the plaint schedule property to the plaintiffs till the defendants vacate the plaint schedule property”.

5. The said petition was resisted by defendant nos.3 and 4 by filing counters contending that the plaintiffs have paid court fee only for 12 months, but not till the time of eviction and that too the petition was filed at a belated stage when the matter is coming up for further evidence and further the petition is barred by limitation.

6. Upon hearing learned counsel for the parties, the learned trial Judge, placing reliance on the decisions relied on by the learned counsel for the plaintiff in ***Life Insurance Corporation of India vs. Sanjeev Builders Privarte Limited and another¹***, ***Indian Oil Corporation Limited vs. Sudera Realty Private Limited²*** and ***Re Cognizance for Extension of Limitation*** in Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in *Suo Motu* Writ Petition (c) No.3 of 2020 of the Hon’ble Supreme Court, dated 10.01.2022, allowed the petition and the question as to which part of the claim is within limitation and which part is

¹. 2022 SCC OnLine SC 1128

². 2022 SCC OnLine SC 1161

without limitation is left open to be decided after due trial by framing an appropriate issue.

7. The said orders have been assailed by the defendant no.1 by filing C.R.P.No.1419 of 2025.

8. Thereafter, the learned X Additional District Judge, Tirupati, vide docket order dated 29.08.2024 directed the plaintiffs to pay additional court fee for claim of damages. Aggrieved thereby, the plaintiffs preferred CRP No.2246 of 2024.

9. Inasmuch as, the issue covered under both the CRPs is interconnected and the decision on one will have bearing on the other, both of them are heard together and are being disposed of by this common order.

10. Heard Sri G.V.S.Mehar Kumar, learned counsel for defendants and Sri P.Rajasekhar, learned counsel, representing Sri O.Uday Kumar, learned counsel for the plaintiffs.

11. Sri G.V.S.Mehar Kumar, learned counsel for defendants, in elaboration to the contents of the counter filed in the amendment petition filed before the trial Court would contend that that the amendment petition claiming amendment of relief having been filed after commencement of trial is

not maintainable in view of amendment made to Order-VI, Rule-17 of Code of Civil Procedure. He would further contend that the learned trial Judge erroneously allowed the amendment petition despite the fact that the plaintiffs did not plead that despite of exercise of due diligence, they could not make the amendment earlier. He would further contend that claiming damages till the date of eviction of the plaint schedule property is impermissible under law and is barred by limitation, since the plaintiffs had already claimed damages for a particular period in the plaint. He would further contend that in view of the orders passed by Hon'ble Supreme Court in SLP No.8331 of 2022 extending the time for vacating the premises till 31.12.2022, which was preferred against the orders passed in A.S.No.54 of 2020 confirming the decree passed in O.S.No.107 of 2015 filed for eviction of the plaint schedule property, the possession of the defendants over the plaint schedule property is legal and cannot be termed as illegal and therefore, claiming damages for illegal use and occupation does not arise. He would further contend that claiming damages and allowing the petition for damages for illegal use and occupation since 2016 to 2022 is contrary to the orders of the Hon'ble Supreme Court and therefore, the orders assailed in CRP No.1419 of 2025 are liable to be set aside. He would further contend that the learned

trial Judge had rightly directed the plaintiffs to pay court fee for the claim made for damages. Accordingly, prayed to allow the CRP No.1419 of 2025 and dismiss the CRP No.2246 of 2024.

In support of his contentions, the learned counsel relied on the decision of Full Bench of Patna High Court in ***Ram Golam Sahu and others vs. Chintaman Singh***³

12. On the other hand, Sri P.Rajasekhar, learned counsel for the plaintiffs, while reiterating the contents of the affidavit filed in support of the petition filed before the trial Court would contend that since the defendants continued in possession of the property even after expiry of lease, is a tenant at sufferance, and is liable to pay mesne profits so long he continues in possession of the property. He would further contend that claim for mesne profits accrues from day to day and it is a continuing one and if the suit for mesne profits would fall to be decided under Article 113 of the Limitation Act and hence the cause of action is a continuing one, the suit may not be barred as regards any part of the claim as contended by the defendants. He would further contend that the Court has discretionary power to pass a decree directing an enquiry into future mesne profits decree for mesne profits is a

³. AIR 1926 Pat 218

discretionary. He would further contend that regard past mesne profits, the plaintiffs since have an existing cause of action on the date of institution of suit, court fee has to be paid and regarding future mesne profits, they have no cause of action on the date of institution of suit and hence it is not possible for him to plead the cause of action or value it or pay court fees thereon at the time of institution of the suit, hence, the order of the trial court directing the plaintiffs to pay court fee on the claim for future damages is erroneous and is liable to be set aside. Accordingly, prayed to dismiss the CRP No.1419 of 2025 and allow the CRP No.2246 of 2024.

In support of his contention, the learned counsel for the plaintiff relied on the decisions in ***Indian Oil Corporation Limited (supra 2)*** and ***Gopalakrishna Pillai and others v. Meenakshi Ayal and others***⁴.

13. Perused the material available on record and considered the submissions made by learned counsel for the parties.

14. In the suit filed by the plaintiffs against the defendants claiming damages for illegal use and occupation of the schedule mentioned premises after expiry of lease, they filed petition vide I.A.No.113 of 2022, seeking to amend the plaint for inclusion of the relief directing the defendants to pay the

⁴. AIR 1967 Supreme Court 155

damages at the rate of Rs.12,96,000/- per month for unlawful use and occupation of the plaint schedule property to the plaintiffs till the defendants vacate the plaint schedule property.

15. The main ground urged by the defendants is that the suit claim is barred by limitation.

16. It is fairly settled and held in *Life Insurance Corporation of India vs. Sanjeev Builders Private Limited and another* (supra 1), that delay in applying for amendment alone is not a ground to disallow the prayer and where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separate for decision.

17. ***In Atma Ram Properties (P) Ltd. Federal Motors (P) Ltd.***⁵, the Hon'ble Supreme Court held that in the case of determination of a lease by the lease coming to an end, tenant would be liable to pay damages for use and occupation at the rate at which the landlord could have let out the premises on being vacated by the tenant. What the landlord is entitled is, to get damages for the use and occupation at any rate, at which, the landlord could have let out the premises on being vacated by the tenant. Section

⁵.(2005) 1 SCC 705

2(12), no doubt, includes profits, which the person, in wrongful possession, might, with ordinary diligence, have received therefrom. The liability of the tenant, to pay damages on the basis of the rate at which landlord could have let out the premises, may not be the same as the profit the tenant might have received with ordinary diligence. In the first place, equating the same must involve a right with a tenant to transfer or sublet the premises. In other words, the Court would have to find whether the tenant could have, in law, let out the premises and derived a higher amount.

18. In ***Indian Oil Corpn. Ltd. v. Sudera Realty (P) Ltd.(supra 2)***, the Hon'ble Apex Court held thus:

89. It is true that a pure question of law which does not involve any investigation of facts, and if the plea of limitation in a given case is such, there can be no taboo in this Court dealing with it even if raised for the first time. This is however not a case where the plea was not raised. It was raised and an issue was framed. But it was expressly given up before the Single Judge and not pursued before the Division Bench.

90. While on acknowledgment under Section 18 of the Limitation Act, this Court in *Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd.* [*Lakshmirattan Cotton Mills Co. Ltd. v. Aluminium Corpn. of India Ltd.*, (1971) 1 SCC 67] held, inter alia, as follows : (SCC pp. 71-72, para 9)

"9. It is clear that the statement on which the plea of acknowledgment is founded must relate to a subsisting liability as the section requires that it must be made before the expiration of the period prescribed under the Act. It need not, however, amount to a promise to pay, for, an acknowledgment does not create a new right of action but merely extends the period of limitation. The statement need not indicate the exact nature or the specific character of the

liability. The words used in the statement in question, however must relate to a present subsisting liability and indicate the existence of jural relationship between the parties, such as, for instance, that of a debtor and a creditor and the intention to admit such jural relationship. Such an intention need not be in express terms and can be inferred by implication from the nature of the admission and the surrounding circumstances. Generally speaking, a liberal construction of the statement in question should be given. That of course does not mean that where a statement is made without intending to admit the existence of jural relationship, such intention should be fastened on the person making the statement by an involved and farfetched reasoning."

98. In *Dwarkas Nathamal v. Balkrishna Baliram* [*Dwarkas Nathamal v. Balkrishna Baliram*, 1962 SCC OnLine Bom 97 : AIR 1964 Bom 42] , a learned Single Judge was dealing with essentially the question whether a subsequent suit for mesne profits for a different period would be barred by Order 2 Rule 2CPC. It was held as follows : (SCC OnLine Bom para 10)

"10. With great respect, I am unable to agree with the view which the learned Judge has taken. It is clear from the passage quoted above that the basis of the view is that 'the claim for mesne profits can arise only when the defendant wrongfully appropriates the profits from the property in respect of which a claim is made'. In the first place, in order to sustain a claim for mesne profits, it is not necessary that the defendant must wrongfully appropriate the profits of the property in respect of which a claim is made. What the plaintiff is required to establish in a suit for mesne profits is that the defendant is in wrongful possession of the property, and if that fact is established then the profits which the defendant has received or which he may with reasonable diligence have received must be paid to the plaintiff. Secondly, to hold that what gives rise to a right to claim mesne profits is the appropriation of the profits by the defendant and that 'a right to claim mesne profits by a suit can accrue only when the person in wrongful possession of the property had actually received such profits', is to ignore that the liability of the defendant to pay mesne profits is not dependent upon the actual receipt of the profits. Section 2(12) of the Code of Civil Procedure defines "mesne profits" as profits which are either actually made or which might with reasonable diligence have been made by the person in wrongful possession of the property. Then again, the reference made by the learned Judge to Article 109 of the Limitation Act is, with respect, not apposite, because, column (3) of the several articles in the 1st Schedule to the Limitation Act concerns itself with the "time from which period begins to run" and not with the date on which the cause of action for the suit accrues. The only implication of the third column of Article 109 is that

a suit which is filed more than three years after the date on which the defendant received the profits would be barred by limitation. [As stated by Sir John Beaumont in *Dullabhbai Hansji v. Gulabbhai Morarji Desai* [*Dullabhbai Hansji v. Gulabbhai Morarji Desai*, 1937 SCC OnLine Bom 32 : (1938) 40 Bom LR 100] , Bom LR at p. 103.]..."

100. Undoubtedly, "mesne profits", as defined in Section 2(12), includes not only the profits which a person in wrongful possession of such property actually receives but also those profits which he might with ordinary diligence have received therefrom together with interest on such profit. What is excluded is only the profit due to improvement made by the person in wrongful possession. However, Article 51 of the Limitation Act deals with a suit for profits of the immovable property belonging to the plaintiff which have been wrongfully received by the defendant. The time no doubt for such a suit begins to run when the profits are received.

19. In view of the observations made above, the limitation aspect can be gone into by framing an appropriate issue to decide as to which part of the claim is within the limitation and which part is barred by limitation. Therefore, the aspect of limitation cannot be made a ground to reject the amendment.

20. The learned trial Judge had taken care of the aspect of limitation and while allowing the petition leaving open the question of limitation clearly observing that an appropriate issue would be framed for deciding which part of the claim is within limitation and which part of the claim is without limitation to be decided after due trial.

21. Therefore, it is clear that the prime contention raised by the defendants regarding the aspect of limitation had been taken care of and the defendants can submit their arguments in that regard.

22. In view of the above, this court finds no legal infirmity in the orders passed by the learned trial Judge in allowing the amendment. The CRP No.1419 of 2025 filed challenging the orders passed by the learned trial Judge in allowing the amendment petition deserves dismissal.

23. Coming to the is concerned, Through the orders impugned in CRP No.2246 of 2024, the learned trial Judge, directed the plaintiffs to pay additional Court fee for the claim of damages.

24. It is fairly settled that Court fee is payable on future mesne profits but it can only be exacted after the amount has been ascertained by enquiry and the Court has no jurisdiction to dismiss an application for enquiry for non-payment of Court fee in advance. The decisions relied on by the learned counsel for the plaintiff squarely applicable to the facts of the case on hand.

25. In view of the above, the order impugned in CRP No.2246 of 2024 is unsustainable and the same is liable to be set aside.

26. Accordingly,

(a) CRP No.1419 of 2025 is dismissed.

(b) CRP No.2246 of 2024 is allowed setting aside the docket order dated 29.08.2024.

There shall be no order as to costs in both the Civil Revision Petitions.

Pending miscellaneous petitions, if any, shall stand closed.

12th March, 2026

JUSTICE RAVI CHEEMALAPATI
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