

KABC0A0045832023



**IN THE COURT OF THE IV ADDL. CITY CIVIL AND
SESSIONS JUDGE MAYO HALL UNIT, BENGALURU
(CCH-21)**

Dated: This the 23rd day of July 2026

PRESENT:

Sri. Sunil A Shetter
IV Addl. City Civil and Sessions Judge, Bengaluru

FINAL DECREE PROCEEDINGS No.25012/2010

Plaintiff/ Petitioner :	M/s Bangalore Jesuit Educational Society (Reg) Represented by its vice president Rev. FR. Terence Farias, S.J., (By Sri. L.P.E.R – Adv.)
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.. Vs ..

Defendant/ respondent:	Canara Bank at No.112, J C Road, Bengaluru- 560002 Represented by its senior General Manager Mr. S.V Pinto (By Sri. B.C.S – Adv.)
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JUDGMENT

The petitioners have initiated this final decree proceeding U/o 20 Rule 12(b) and 12(c)(i) r/w section 151

of CPC, to hold an enquiry for the determination of mesne profits payable by the respondent for the period 01.01.2006 and 31.03.2009 as predicated in the preliminary decree dated 16.03.2009 passed in O.S No.15599/2006.

2. The brief facts of the petitioner is that, it had instituted the suit in O.S. No.15599/2006 on the file of this court seeking the relief of eviction against the defendant in respect of the suit schedule property and also for payment of past and future mesne profits with effect from 01.01.2006 at the monthly rate to be determined by this court along with costs.

3. After appearance of the parties the suit came to be referred to Lok Adalath of District Legal Service Authority, Bengaluru city for mediation. After series of discussions and negotiations the settlement was arrived between the parties to the suit and accordingly, joint memo was filed. The award came to be passed before Lok Adalath on 16.03.2009 interms of the joint memo by passing a preliminary decree.

4. The terms of joint memo are as under;

“1. That a preliminary decree be passed in the suit for delivering vacant possession of the suit schedule premises on or before 31.03.2009.

2. That in so far as the plaintiff's claim for mesne profits is concerned, the same may be determined by the court in a final decree proceedings after enquiry.

3. the Defendant will deposit the mesne profits without prejudice to its right and plaintiff is at liberty to withdraw the amount of mesne profit deposited without prejudice to its rights.

4. Refund of court fee paid on the plaint may be ordered.

Therefore, the plaintiff and defendant pray that, preliminary decree be passed in terms of joint memo on the above terms and conditions.”

5. It is also the case of the petitioner that, in the light of the preliminary decree now it is incumbent upon the court to determine the mesne profits payable by the respondent for the period 01.01.2006 to 31.03.20.09 since the respondent has vacated the plaint schedule premises on 31.03.2009. The respondent has effected a payment of sum of Rs.28,38,000/- by depositing the same into the court. This

amount will have to be given credit for in the total amount of mesne profits payable to the petitioner either in part or entirely while determining the mesne profits.

6. It is also the case of the petitioner that, the respondent is liable to pay the mesne profits from 01.01.2006 till 31.03.2009 at the rate of Rs.4,00,000/- p.m as mesne profits. During the aforesaid period similarly situated accommodation in the locality of petition schedule premises was fetching rentals at Rs.4,00,000/- p.m. The plaint schedule property is located on the main artery of the city of the Begnaluru and is provided with all the amenities of human and business requirements. The plaint schedule property is a much coveted and wanted property and is fairly new, sturdy and well designed building. The current market value of the property would be Rs.10 crores. The amount of mesne profits claimed by the petitioner is reasonable and justified. Hence on these grounds the petitioner has prayed to allow the petition.

7. The petitioner has not filed any objections to the main petition, but however he had filed I.A No.I under order XI rule 1 of CPC seeking interrogatories which came to be dismissed as per the order dated 16.03.2021.

8. I have heard the arguments of the learned counsel for petitioner on the main petition and perused the entire materials available on record. There is no representation on behalf of respondent and hence, the arguments on behalf of respondent is taken as nil.

9. Considering the contentions of the petitioner and taking into consideration the entire materials available on record, the following point arises for my consideration :-

1. Whether the petitioner is entitled for determination and recovery of mesne profits from the respondent in terms of the compromise decree?

2. What order or decree?

10. For the above points, my findings are

Point No.1:- In Affirmative,

Point No.2:- as per final order, for the following

:

REASONS

11. **POINT NO.1:-** On going through aforesaid facts of the respective parties, the entitlement to mesne profits is no longer open for adjudication, because the compromise decree itself expressly reserves determination of mesne profits in final decree proceedings. The real enquiry is confined to the period and quantum. Order XX Rule 12 CPC permits such an inquiry and a final decree in accordance with its result.

12. In order to substantiate its claim, the secretary of the petitioner is examined as PW-1 and got marked the documents at Ex.P-1 to P-7. The respondent has not cross-examined PW-1. However, the respondent has not chosen to enter the witness box or adduce any oral or documentary evidence in rebuttal.

13. At the outset, it is necessary to notice that the present proceeding is not an independent suit for determination of the petitioner's right to claim mesne profits. The source of the present proceeding is the compromise decree passed between the parties in the suit. The compromise decree has attained finality and is binding upon both parties.

14. The terms of the compromise decree disclose that the respondent had expressly undertaken to deliver vacant possession of the suit schedule property on or before 31.03.2009. More importantly, the parties have specifically agreed that the quantum of mesne profits shall be determined in final decree proceedings and that the respondent would deposit the amount of mesne profits so determined.

15. Therefore, the entitlement of the petitioner to seek an enquiry into mesne profits cannot now be reopened by raising general objections. The court, while conducting final decree proceedings, is required to give effect to the

preliminary decree and cannot travel behind or beyond the terms of the decree. The enquiry is essentially confined to determination of the quantum of mesne profits payable in accordance with the decree.

16. Section 2(12) of the Code of Civil Procedure defines “mesne profits” to mean those profits which the person in wrongful possession of the property actually received or might, with ordinary diligence, have received therefrom, together with interest on such profits, excluding profits attributable to improvements made by the person in wrongful possession.

17. Order XX Rule 12 of CPC empowers the Court, in a suit relating to recovery of possession of immovable property and rent or mesne profits, to direct an enquiry regarding mesne profits. Under Order XX Rule 12(1)(c) of CPC, such enquiry may extend from the institution of the suit until delivery of possession to the decree-holder, relinquishment of possession in the manner contemplated

therein, or expiry of the statutory period stipulated by the provision, as applicable. Under sub-rule (2), after completion of the enquiry, a final decree is required to be passed in accordance with the result of such enquiry.

18. Where evidence is available on record, the Court has power to determine mesne profits under Order XX Rule 12 of CPC. The principle is that determination of mesne profits must rest on the evidence available and the surrounding circumstances of the case. Thus, mesne profits cannot be fixed arbitrarily; nevertheless, where there is cogent and reliable material on record, the Court is competent to quantify the same.

19. The compensation for use and occupation has to bear a reasonable relation to the rent which the owner could have earned by letting out the premises. The contractual rent prevailing during the subsistence of tenancy is not necessarily a fixed ceiling upon compensation for subsequent use and occupation.

20. It is an admitted fact that the respondent was in occupation of the suit schedule property. It is further not in dispute that the last drawn rent in respect of the suit schedule property was Rs.68,000/- per month. The respondent ultimately delivered possession of the property only on 31.03.2009.

21. The admitted last drawn rent of Rs.68,000/- per month is a significant and reliable circumstance for assessing the minimum reasonable letting value of the suit schedule property. The said figure is not a hypothetical estimate put forward for the first time in these proceedings. It arises out of the admitted jural relationship and the actual consideration paid or payable for occupation of the very same property.

22. It is also material to note that in the written statement filed in the original suit, the defendant/respondent had taken a contention expressing readiness to pay enhanced rent. Though such a statement by itself may not

conclusively determine the exact market rental value, it assumes significance while appreciating the present general denial of the petitioner's claim. The earlier stand of the respondent clearly indicates that even according to it the rent was capable of enhancement and that the last prevailing rent was not excessive.

23. The petitioner has entered the witness box and has not adduced evidence in support of its claim. PW-1 has been subjected to cross-examination. However, the respondent has not entered the witness box. No evidence has been adduced by the respondent to establish that the rental value of the suit schedule property was less than Rs.68,000/- per month or that the property was incapable of fetching the said amount during the relevant period.

24. It is well settled that the burden of proving the petitioner's claim primarily rests upon the petitioner. However, once the petitioner has produced evidence and relies upon an admitted last drawn rent in respect of the

very same property, the evidentiary burden shifts upon the respondent to place rebuttal material, particularly when the respondent seeks to contend that the property could not have fetched such rental income.

25. The respondent, being the person in occupation of the property and a party to the tenancy/occupation arrangement, was in a position to speak about the condition, nature and rental value of the property. Its failure to enter the witness box and subject its version to cross-examination is a circumstance which cannot be ignored. In the absence of rebuttal evidence, the Court has to assess the petitioner's evidence on its merit and in the light of admitted facts. In the present case, the admitted last drawn rent of Rs.68,000/- per month furnishes a safe, objective basis for determination of mesne profits. Even though the respondent had earlier expressed readiness to pay higher rent, this Court is of the considered opinion that, in the absence of sufficient independent material establishing the precise higher market rental value, it

would not be proper to determine mesne profits on conjecture or speculation.

26. At the same time, the respondent cannot contend that the petitioner is entitled to anything less than the admitted last drawn rent. Had possession been available to the petitioner, the property was reasonably capable of yielding at least Rs.68,000/- per month. Therefore, applying the test contained in Section 2(12) CPC, the said amount represents the profit which the petitioner might, with ordinary diligence, have received from the property.

27. The compromise decree expressly contemplated determination of mesne profits in the present proceedings. The respondent voluntarily accepted the said term. Therefore, the general objections now raised cannot defeat the express terms of the decree.

28. Admittedly, possession of the suit schedule property was delivered to the petitioner on 31.03.2009. Hence, the respondent's liability towards mesne profits terminates on

the date of actual delivery of possession, namely, 31.03.2009. The starting point of the period shall be as stipulated in the compromise/preliminary decree and the mesne profits shall be calculated up to 31.03.2009. Accordingly, this Court holds that the petitioner is entitled to mesne profits at the rate of Rs.68,000/- per month for the period from 01.01.2006 till 31.03.2009.

29. If any amount has already been deposited or paid by the respondent towards rent, damages, use and occupation charges or mesne profits for the aforesaid period, the respondent is entitled to due adjustment of the said amount, subject to proof of such payment from the records of the case. The petitioner in the affidavit annexed to the main petition at para no.7 has contended that, the respondent has also effected payment of a sum of Rs.28,38,000/- [Twenty eight lakh thirty eight thousand only] by deposit of the same into court and this amount deposited in court has been paid to the petitioner/plaintiff by the registry of this court without prejudice to its right

and the said amount paid by the respondent will have to be given credit for in the total amount of mesne profits payable to the plaintiff either in part or entirely whilst the said sum is being determined. In view of the said contention, the payment of a sum of Rs.28,38,000/- [Twenty eight lakh thirty eight thousand only] deposited in the court and later on paid to the petitioner will have to be adjusted in the final mesne profits.

30. Insofar as interest is concerned, the definition of mesne profits under Section 2(12) CPC itself includes interest on such profits. Having regard to the facts and circumstances of the case, the nature of the compromise decree and the period involved, interest at the rate of 6% per annum on the amount of mesne profits found due, from the respective dates on which the monthly amounts became payable till realization, would meet the ends of justice. For the foregoing reasons, Point No.1 is answered in the Affirmative and Point No.2 is answered accordingly.

ORDER

The final decree petition filed by the petitioner under Order XX Rule 12 of the Code of Civil Procedure is hereby allowed.

It is hereby declared that the petitioner is entitled to recover mesne profits from the respondent at the rate of Rs.68,000/- (Rupees Sixty Eight Thousand only) per month from 01.06.2009 till 31.03.2009, the date of delivery of vacant possession of the suit schedule property.

The respondent shall pay the aforesaid mesne profits together with interest at 9% per annum from the respective dates on which the monthly mesne profits became due till realization.

The amount of Rs.28,38,000/- already paid by the respondent to the petitioner shall be given due credit and deducted while calculating the amount payable under this decree.

The petitioner shall furnish a memo of calculation in accordance with this order. After

verification of the calculation and payment of the requisite court fee, if any payable under law, a final decree shall be drawn accordingly.

Having regard to the facts and circumstances of the case, the respondent shall pay the costs of these proceedings to the petitioner.

Draw final decree accordingly.

(Dictated to the stenographer directly on computer, after computerization, corrected by me and then pronounced in the open Court today the 23rd day of July 2026)

(SRI. SUNIL A SHETTAR)
IV Addl. City Civil and Sessions
Judge(CCH-21), Bengaluru.

ANNEXURE

Witnesses examined for the plaintiff:

PW.1 : Mr. Rev.Fr. Arun Prashanth D'Souza, SJ

PW.2 : Mr. Rev.Fr. Joy Pradeep Rodrigues, SJ

Documents exhibited for the petitioner :

Ex.P1:	Certified extract of the proceedings of the governing body meeting of the petitioner society held on 07.09.2021
Ex.P2 :	Certified copy of order sheet in O.S No. 15599/2006
Ex.P3:	Certified copy of Decree in O.S No. 15599/2006
Ex.P4:	Certified copy of joint memo filed in O.S No.15599/2006
Ex.P5:	Letter dated 28.03.2009 written by the respondent to the petitioner
Ex.P6:	Letter dated 31.03.2009 written by the petitioner to the respondent
Ex.P7:	Letter dated 31.03.2009 by the petitioner to the senior manager Canara bank regarding surrender of premises occupied by the bank

Witnesses examined for the defendants:

NIL

Documents exhibited for the defendants:

NIL

(SRI. SUNIL A SHETTAR)
IV Addl. City Civil and Sessions
Judge, Bengaluru.

(Judgment pronounced in the open court vide separate judgment)

ORDER

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The petitioner shall furnish a memo of calculation in accordance with this order. After verification of the calculation and payment of the requisite court fee, if any payable under law, a final decree shall be drawn accordingly.

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Draw final decree accordingly.

IV Addl. City Civil and Sessions
Judge, Bengaluru.

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