

## Mesne Profits

### S. 2(12), O. 20, R. 12 – **Mesne Profits – Wrongful Possession by joint act of several persons – Liability for mesne profit.**

From a plain reading of definition in S. 2 (12) it is clear that wrongful possession of the defendant is the very essence of claim for mesne profits and the very foundation of defendant liability therefore, As a rule, therefore, liability to pay mesne profit goes with actual possession of the land. But where the plaintiff dispossession or his being kept out of possession can be regarded as joint or concerted act or several persons. Each of them who participate in the commission of that act would be liable for mesne profit even though he was not in actual possession and the profit were received not by him but by some of his confederates. In such a case where the claim for mesne profit were received not by him but by some of his confederates. In such a case where the claim for mesne profit is against several trespassers who combined to keep the plaintiff out of possession, it is open the court to adopt either of the two courses: it may be its decree holds all such trespassers jointly and severally liable for mesne profits. Leaving them to have their respective right adjusted in separate suit for contribution; or it may if there is proper material before it, ascertain and apportion the liability of each of them on a proper application made by the defendant during the same proceedings. *Luaj Kochuvareed v. P. Mariappa Gounder. AIR 1979 SC 1214: (1979) 3 SCC 150: (1979) 3 SCR 58: (1979) 3 Mah LR 229.*

- **S. 2(12)** – Ex Parte decree passed in 1949 by Bankura Court in West Bengal in personal action against the resident of Madhya Bharat State – Validity of – See Ibid, S. 32. **AIR 1971 SC 974.**

**S. 2(12) and S. 34 (as amended in 1956) – Mesne Profit – Rate of Interest to be allowed on.**

The rate of interest to be allowed in regard to mesne profits or U/S. 34 is discretionary, as there is no question of any contractual rate or any particular rate fixed by statute. The only limitation which is prescribed by S. 34 as it stands now is that the rate shall not exceed 6 Per cent per annum a limitation which did not figure in the section before its amendment by Act LXVI of 1956 though Courts as general rule. Seldom awarded any rates of 6 per cent per annum. *Mahant Narayana Dasjee Varu v. Board of Trustees.* **AIR 1965 SC 1231: (1965) 2 SCWR 259: (1965) 2 SCJ 9.**

-**S. 2(12) and S. 34.** – Mahant in possession of Devasthanam properties – Mahant removed under provision of Act. – Dispute over title of properties continuing for number of year – Mahant is liable to pay interest on mesne profits at normal rate of 6 p.c. **AIR 1959 Andh Pra. 64. Reserved.** *Mahant Narayana Dasjee Varu v. Board of Trustees.* **AIR 1965 SC 1231: (1965) 2 SCWR 259: (1965) 2 SCJ 9.**

- **S. 2(12) and S. 34 – ‘Mesne Profits’ - Interest has to be allowed in computation of.**

Under S. 2 (12) of the Civil Procedure Code which contains the definition of the mesne profit interest is an integral part of mesne profit and has, therefore, to be allowed in computation of mesne profit itself. That proceeds on the theory that the person in wrongful possession appropriating income from property himself gets the benefit of the interest of such income. *Mahant Narayana Dasjee Varu v. Board of Trustees.* **AIR 1965 SC 1231: (1965) 2 SCWR 259: (1965) 2 SCJ 9.**

- **S. 2(12), O. 20, R. 12(1)( C ) – Mesne profit – Assessment of – Assessment based on estimated return on value of property not sustainable.**

The normal measure of mesne profit is the value of user of land to the person in wrongful possession. The assessment of the compensation based, not on the value of the user but on an estimated return on the value of the property, cannot be sustained. Beside the mesne profit, the plaintiff is also entitled to interest on such mesne profits: vide S. 2(12). *Fateh Chand v. Balkrishan Das.* **AIR 1963 SC 1405: (1963) 1 SCWR 755: (1964) 1 SCJ 187: (1964) 1 SCR 515.**