

SYNOPSIS

Mesne Profit

Mesne Profit [CPC 2 (12)]

Mesne profit of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession [Sec 2(12) of Code of Civil Procedure 1908]. In simple words, mesne profits are the profits of an estate received by a tenant in wrongful possession and recoverable by the landlord; it is a compensation that a person in the unlawful possession of property has to pay for such wrongful occupation to the owner of the property. [Purificacao Fernandes v. Hugo Vincente de Perpetuo Socorro Andhrade AIR 1985 Bom. 202] There are three different types of cases in which question of rights of profits arise [Nataraja Achari v. BalambalAmmal, AIR 1980 Mad 222]:

- a) Suit for ejectment or recovery of possession of immovable property from a person in possession without title, together with a claim for past or past and future mesne profits.
- b) A suit for partition by one or more tenants in common against others with a claim for account of past or past and future profits.
- c) Suits for partition by a member of joint Hindu family with a claim for an account from the manager.

Interest is an integral part of mesne profits and has, therefore, to be allowed in the computation of mesne profits itself. That proceeds on the theory that the person in wrongful possession

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appropriating income from the property himself gets the benefit of the interest on such income [N. Dasjee v. Tirupathi Devasthanam, AIR 1965 SC 1213]. Since the statute does not fix any rate of interest it is left at the discretion of court to determine the rate of interest. Generally, the rate of interest is awarded at 6 % per annum. The profit attributable to the improvements made on the property may be excluded, but a person in wrongful possession of the property is not entitled to claim expenses incurred on improvements in such property [K. C. Alexander v. Nair Service Society Ltd., AIR 1966 Ker 286]. Determination of quantum of mesne profits is left at the discretion of the court, and that depends upon the facts and surrounding circumstances of each case. Rent could be a relevant factor, for considering the quantum of mesne profits but not a decisive of the matter [Kesardeo Baijnath Vs. NathmalKisanalal, AIR 1966 Bom 266].