

# Indic Legal Law Journal

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## A BRIEF OUTLOOK ON MESNE PROFITS

### INTRODUCTION

*Once in a while, withinside the area of regulation, we would have encountered the period Mesne income. But what does its method? Are these a few forms of income we derive? Yes. Are those as the "Mesne" call indicates are associated with proprietary. Studying it exhaustively and etymologically, this period "Mesne" bears root starting place from Scotland. During the Middle English era, the period "mennska" held the means of honor. The Old Norse holds which means of "mennska" for humanity and corresponding to the vintage English man. As an entire Mesne method an honorary or proprietary hobby which may be taken into consideration as a legitimate or actual hobby and if study together, the period Mesne income bears which means of actual hobby income which someone deserves.*

*The regulation of nature offers the number one proper repayment towards the breach of criminal proper. Likewise, wrongful interference with the immovable assets of every other is a criminal wrong, and the regulation of nature offers the number one proper to damages or repayment for such criminal wrong.*

*The term 'mesne income' refers to the damages or payback that can be recovered from someone who has wrongfully owned immovable properties. The Mesne income is not anything however repayment that someone withinside the illegal ownership of others' assets has to pay for such wrongful profession to the proprietor of the assets. It is a settled precept of regulation that wrongful ownership is the very essence of a declaration for mesne income and the very basis of the illegal possessor's legal responsibility, therefore. As a result, legal liability to pay mesne*

*revenue is usually associated with actual property ownership. That is to say, in most cases, the person who has unlawful possession and enjoyment of immovable assets is liable for mesne income.*

*Before comprehending the idea and applicable provision of mesne income within the Code of Civil Procedure, 1908, it'd be suitable to discuss & recognize the idea of possession and ownership in nutshell.*

## **OWNERSHIP & POSSESSION**

The concept of possession is one of the most fundamental legal concepts, and it has a central position in all legal institutions. Ownership entails a plethora of claims, rights, privileges, and immunities about the things held. According to a few jurists, having the notion of possession without those claims may be irrelevant. With the rise of civilization came a gradual evolution of the notion of possession. So lengthy because human beings have been wandering from location to location and had no settled location of the house that they'd no experience of possession.

After they began planting trees, farming land, and building their homes, the vision began to take shape. The enhancement of the notion of possession coincided with the change from a pastoral to an agricultural finance system. People began to think in terms of 'mine and thine.'

## **ORIGIN OF THE CONCEPT OF MESNE EARNINGS**

The idea of mesne earnings has its foundation within the medieval period. The King possessed all land under the feudal system. The King could hand over a portion of those estates to his barons in exchange for infantrymen whenever he needed to raise an army.

Soon this becomes a pleasing manner of elevating cash via way of means of charging lease for the land. In turn, the barons might let loose a part of the land to tenant farmers and they'd pay lease – normally in kind, via way of means of offering cattle or crops – for the privilege of being capable of hold a number of the produce for themselves. As a result, the concept of tenancy chains was developed.

The person to whom they paid rent became known as the 'mesne landlord.' In old French, the word meant "middle."

The word changed into originally ‘mesne rents and earnings’ which means all of the leases or take advantage of the land that might be extracted via way of means of the intermediate landlord. In the present-day time, the term ‘mesne earnings’ method declares that a lawful proprietor of the belongings has in opposition to the illegal possessor of the belongings.

### **INTEREST ON MESNE PROFIT**

The definition of the term ‘Mesne profit’ furnished below phase 2(12) of the Code of Civil Procedure, 1908 explicitly affords that hobby is a quintessential part of mesne income. From the expression ‘collectively with the hobby on such income’ in Section 2(12) it's miles obvious that ‘mesne profit’ consists of inside its fold a hobby component. And the charge of hobby to be allowed concerning mesne income varies relying upon the statistics and instances of every case. Since the statute does now no longer restoration any hobby charge, its miles are left at the discretion of the courtroom docket to decide the charge of the hobby. Generally, the charge of the hobby is offered at 6 % according to the annum.

Very early withinside the 12 months 1922, in *Lata Prasad v. Sri Ganeshji* Hon’ble Allahabad High Court<sup>1</sup>, held that the term ‘Mesne income’ additionally consists of a hobby at the income earned via way of means of the illegal possessor of the belongings and in which the decree of granting mesne income say not anything approximately hobby, the decree-holder can declare that the decree of mesne income consists of the hobby.

In *N. Dasjee v. Tirupathi Devasthanam*<sup>2</sup>, Hon’ble Supreme Court discovered that “Under Section 2(12) of the Civil Procedure Code which includes the definition of mesne income, hobby is a quintessential a part of mesne income and has, therefore, to be allowed withinside the computation of mesne income itself. That proceeds at the principle that the person in wrongful ownership appropriating earnings from the belongings himself receives the advantage of the hobby on such earnings.”

In *Tarquino Raul Henriques v. Damodar Mangalji and Co. Pvt. Ltd.*<sup>3</sup>, the query at once got here up for attention earlier than the Hon’ble Bombay High Court. In this case, the appellate filed an

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<sup>1</sup> *Lalta Prasad v. Sri Ganeshji*, A.I.R. 1922 All 117.

<sup>2</sup> *N. Dasjee v. Tirupathi Devasthanam*, A.I.R. 1965 S.C. 1213.

<sup>3</sup> *Tarquino Raul Henriques v. Damodar Mangalji and Co. Pvt. Ltd.*, A.I.R. 1989 Bom 309.

evaluation utility in opposition to the order of the Hon'ble Court. The impugned order granted mesne income however it became a silent hobby always a hobby on such income became concerned. It became, therefore, advised via way of means of the appellate that the hobby being a quintessential a part of the mesne income it became implicit withinside the order. On the opposite hand, defendants contended that supply of hobby is discretionary and as soon as the impugned order is silent on the brink of hobby it is miles secure to count on that the hobby became negative. The trouble became whether the supply of hobby is implicit while an order for mesne income is directed S. 2(12) of the Code of Civil Procedure. Having taken into consideration the observations of the Supreme Court in N. Dasjee v. Tirupathi Devasthanam and the definition of the term 'Mesne income' below Section 2(12) the courtroom docket held that the expression "collectively with the hobby on such profit" surely shows that the mesne income might now no longer handiest consist of the real harm suffered due to wrongful ownership however additionally the hobby collected thereon and in that experience, the mesne income might constantly include each the harm and the hobby. And the supply of hobby is implicit withinside the mesne income.

### **LEGAL PROVISION ASSOCIATED WITH MESNE PROFITS**

Mesne income can be described because the income or different pecuniary benefits, which one that disposes of the authentic proprietor gets among disseizing and the healing of ownership. Therefore, mesne income corresponds to the income which the character in wrongful ownership is receiving or would possibly get hold of with due diligence for the wrongful career of assets. Mesne income is described below Section 2(12) of the Code of Civil Procedure.

Section 2 (12) of the Code of Civil Procedure presents that: "Mesne income" of assets manner the one's income which the character in wrongful ownership of such assets surely acquired or would possibly with the everyday diligence have acquired therefrom, collectively with the hobby on such income however shall now no longer encompass income because of development made via way of means of the character in wrongful ownership.

From the evaluation of the above-said definition, one can finish that "Mesne income" is the income, which the character in illegal ownership surely earned or would possibly have earned with everyday diligence. According to Section 2(12), someone will become entitled to mesne income handiest whilst he has proper to gain ownership however some other character whose career is

unauthorized continues him disadvantaged of that ownership. The first and most important circumstance for awarding mesne income is illegal ownership of the occupant of the assets. The phase-in addition presents that Mesne income additionally encompasses hobby on such income. However, it explicitly excludes any income earned because of development withinside the assets made via way of means of the character in illegal ownership of such assets.

In *Phiraya Lal alias Piara lal v. Jia Rani*<sup>4</sup> Hon'ble Delhi High Court even as defining the period, mesne income found that “whilst damages are claimed in recognize of the wrongful career of immovable assets primarily based totally at the loss because of the wrongful ownership of the trespasser to the character entitled to the ownership of the immovable assets, those damages are referred to as mesne income”.

In *Nataraja Achari v. Balambal Ammal*<sup>5</sup>, considering the definition of mesne income supplied below Section 2(12) Hon'ble Madras High Court found that there are 3 unique forms of instances wherein the query of rights of income arises:

1. Suit for ejection or recuperation of ownership of immovable assets from someone in ownership without title, collectively with a declaration for beyond or beyond and destiny mesne income.
2. A match for partition via way of means of one or greater tenants in a not unusual place in opposition to others with a declaration for the account of beyond or beyond and destiny income.
3. Suits for partition via way of means of a member of joint Hindu own circle of relatives with a declaration for an account from the supervisor.

The Court found, “In the primary case, the ownership of the defendant now no longer being lawful, the plaintiff is entitled to get better mesne income such income being true withinside the nature of damages. In 2<sup>nd</sup> case, the ownership and receipt of income via way of means of the defendant now no longer being wrongful the plaintiff's treatment is to have an account of such income making all jus allowance withinside the favor of the amassing tenant in a not unusual place. In one-third of the case, the plaintiff should take the joint own circle of relatives' assets because it exists on the

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<sup>4</sup> *Phiraya Lal alias Piara lal v. Jia Rani*, A.I.R. 1973 Del 186.

<sup>5</sup> *Nataraja Achari v. Balambal Ammal*, A.I.R. 1980 Mad 222.

date of the call for partition and isn't always entitled to open up a beyond account or declare alleviation at the floor of beyond inequality of amusement of the income, besides wherein the supervisor has been responsible for fraudulent behavior or misappropriation. The plaintiff might, however, be withinside the role of the tenant in not unusual place from the date of severance in reputation and his proper might should be labored out on that basis.

## **ESTIMATION OF MESNE EARNINGS**

Section 2(12) of the Code of Civil Procedure has a detailed precept defining the legal duty for mesne income, 1908 which defines 'mesne income' to mean "the one's income which the man or woman in wrongful ownership of assets genuinely obtained or would possibly with everyday diligence have obtained therefrom collectively with the hobby on such income, however, shall now no longer encompass income because of enhancements made through the man or woman in wrongful ownership". However, the Section no longer provides a consistent basis for calculating such profit. According to the provision, mesne income includes hobby income. And revenue earned as a result of development is not taken into account when calculating the amount of mesne income.

In light of this broad rule, the courtroom's decision on quantum mesne compensation is left to its discretion and mesne income being like damages even the Court can't lay down any invariable rule governing award and evaluation of mesne income in each case. The Court might also additionally mildew award and evaluation of mesne income in keeping with the justice of the case. To put it another way, there may not be a universal criterion for evaluating mesne revenue. The amount of mesne revenue is determined by the facts and circumstances of each case.

Earlier the condominium price of the assets shaped the idea of evaluation of mesne income. When deciding on the condominium price of the assets, the courts used to give mesne income. This exercise of assessing mesne income primarily based totally at the hire changed into beside the point and in a while, the Courts rightly struck it down.

In *Kesardeo Baijnath Vs. Nathmal Kisanalal*<sup>6</sup>, it changed into held, "that willpower of mesne income primarily based totally at the condominium price of the assets might be a wrong take a

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<sup>6</sup> *Kesardeo Baijnath v. Nathmal Kisanalal*, A.I.R. 1966 Bom 266.

look at with inside the context of the definition of menses of income in phase 2[12] Rent can be an applicable factor, for thinking about the quantum of mesne income however now no longer a selection of the matter”.

In *Dr. J K Bhakthavasala Rao v. Industrial Engineers*<sup>7</sup>, Nellore, Hon’ble Andhra Pradesh High Court found that “solving the damages for the use and career of the fit constructing through its very nature, entails adjudication of a natural query of reality and there exists hardly ever any uniform and a well-known sample of evaluation on this regard. The courtroom docket needs to think about comparative evaluation of nature, vicinity, and many others of the fit premises vis-à-vis comparable traits of premises withinside the surrounding area. However, finding premises of equivalent kind, size, and first-class in the same region is quite difficult. Even if there exists an extensive similarity on this aspect, the hire in admires of such premises might depend, mostly, upon the want of the lessee and the occasions beneath neath which the rentals are granted. Prevalence of amity or enmity, because the case might also additionally be, among the landlords and the tenants and the length of the hire are positive elements, which might have to pertain to this. And consequently, the mesne income can't be decided entirely primarily based totally at the condominium price of the land”.

While assessing the quantum of mesne income, the elements along with the vicinity of the assets, comparative price of the assets, the situation of the assets in query, income which can be genuinely received or could have been received from the affordable use of such assets are commonly considered through the courts. Moreover, it's far a settled precept of regulation that the standards for the calculation of mesne income aren't what the proprietor loses through the deprivation of ownership however income need to be calculated primarily based totally on what the man or woman in wrongful ownership namely, the defendants had genuinely obtained or would possibly with everyday diligence have obtained.

Moreover, the regulation of fairness calls for that mesne income need to be the internet income i.e., for earnings such as income, the money produced after deductions closer to needed spending. Therefore, all such prices made through the man or woman in wrongful ownership, because the plaintiff might be sure to make if he were in ownership, need to be deducted from the gross

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<sup>7</sup> *Dr. J K Bhakthavasala Rao v. Industrial Engineers*, Nellore, A.I.R. 2005 A.P. 438.

earnings. These costs encompass costs incurred for the upkeep of the assets, cess paid at the assets, and many others, relying upon the character of the assets. For instance, within the case of agricultural land fee of cultivation, seasonal fluctuation, and many others need to be deducted.

Likewise, the courtroom docket needs to additionally deduct the income made through illegal possessors via development within the assets. It may be unreasonable on the court's side to award mesne income without taking such expenses into account.

In a nutshell, when it comes to evaluating mesne revenue, we may state that there are no standardized standards. The amount of mesne income depends on the facts and circumstances of the case, and courts might adjust it according to the fairness of the case. However, over time, the courts have knocked down the practice of calculating mesne income solely on the value of the assets' condominiums. Today, different factors are considered whilst assessing the quantum of mesne income as mentioned earlier. Moreover, the income needs to be ascertained primarily based totally on what the wrongful possessor of the assets earned or would possibly have earned with due diligence and now no longer primarily based totally on what the plaintiff has lost. And the costs of care of the assets incurred by the illegitimate holder of the assets should be subtracted from such revenue.

## **BURDEN OF PROOF**

It is a settled precept of regulation that during the case of mesne income the weight of evidence rests at the claimant i.e., the plaintiff. And mesne income being within the shape of compensation, earlier than claiming mesne income the plaintiff ought to set up earlier than the Hon'ble courtroom docket that he becomes lawful proprietor of the belongings and he became disadvantaged of it with the aid of using the illegal ownership of the defendant. The plaintiff has proved the aforementioned information will become entitled to mesne income. Further, the onus of proving what income he would possibly have obtained with the normal diligence lies at the claimant.

In the case of Ramakka v. Nagesam<sup>8</sup>, Hon'ble Madras High Court at the same time as thinking about the query of the onus of evidence in case of mesne income held that "onus of proving what

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<sup>8</sup> Ramakka v. Nagesam, A.I.R. 1925 Mad 145.

income would possibly, with due diligence, were obtained in any yr lies upon the celebration claiming mesne income”. The courtroom docket similarly discovered that “Plaintiff may additionally adduce proof to show that the occupant becomes now no longer diligent and can have were given extra income with the aid of using right diligence”.

### **Union of India (UOI) v. Banwari Lal and Sons (P) Ltd<sup>9</sup>**

Facts: In this case, M/s Banwari Lal & Sons (respondent) had been the proprietors of the belongings located in New Delhi. On 13/3/1959, the Delhi Administration below the Requisition and Acquisition of Immovable Property Act, 1952, requisitioned stated belongings. Before the stated Act lapsed on 10.3.1987, a notification below Section four of the Land Acquisition Act became issued on 6.3.1987 for the purchase of the whole belongings. The stated notification became set apart through the High Court through a judgment dated 04/02/1991 on a writ filed through the Respondent. High Court additionally appointed an arbitrator to decide the damages w.e.f 10/3/1987, payable through Delhi Administration to the respondent in recognize of the belongings. The appellante took SLP the stated judgment however the equal became disregarded through Hon’ble Court vide order dated 21/3/1991. Appellant became, however, allowed time to vacate the belongings through 31/3/1993. Though the appellante had been allowed time to vacate the premises through 31/3/1993 the arbitrator calculated damages from 10/3/1987, to which the appellante filed objections. The found out unmarried Judge disregarded the stated objections. Being aggrieved, the appellante appealed to the department bench of the High Court. By the impugned judgment the High Court disregarded the enchantment. Against that judgment, the appellante has filed this enchantment through a manner of unique leave.

Issues:

1. Whether the use and profession of the belongings through the appellante after 10/3/1987 became wrongful and unlawful and prefer trespass even once they had been allowed time to vacate the premises until 31/3/1993 through the Hon’ble Supreme Court; and
2. Whether the respondent became entitled to mesne earnings?

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<sup>9</sup> Union of India v. Banwari Lal (P) Ltd, A.I.R. 2004 S.C. 1983.

Judgment: Hon'ble Supreme Court held that "Given the permission granted through this Court permitting the appellant to apply and occupy the belongings as much as 31/3/1993, it cannot be stated that the ownership of the appellant became unlawful and wrongful and just like the trespass. In the circumstances, damages had been claimable now no longer primarily based totally on mesne earnings however primarily based totally on truthful hire the arbitrator has assessed damages on the belief that when 10/3/1987, the profession and ownership of the belongings had been wrongful and unlawful and just like the trespass. Accordingly, the arbitrator has assessed damages at the footing that the respondent became entitled to mesne earnings. This assumption became incorrect because the appellant became given time through this Court to stay in ownership as much as 31.3.1993." The courtroom docket in addition determined that, "proper to mesne earnings presupposes an incorrect while a proper to hire proceeds on the idea that there may be a contract. But there may be an intermediate magnificence of instances wherein the ownership even though now no longer wrongful withinside the starting assumes a wrongful man or woman whilst it's far unauthorized retained and, in such instances, the proprietor isn't entitled to assert mesne earnings however handiest the truthful hire".

### **Bhagwati Prasad v. Shri Chandramaul<sup>10</sup>**

Facts: These cross-appeals stand up from a match filed with the aid of using Chandramaul (hereinafter referred to as the plaintiff) in opposition to Bhagwati Prasad (hereinafter referred to as the defendant) withinside the Court of Second Civil Judge, Kanpur. The plaintiff alleged that he become the proprietor of the residence and that he had set free the stated residence to the defendant as his tenant on a month-to-month hire of Rs. 450 consistent with the month. The defendant persevered to pay this hire and become now no longer in arrears on that behalf as of the thirty-first March 1954. He did not pay the rent after that, therefore the plaintiff terminated his tenancy and filed suit on November 30, 1955, seeking ejection in opposition to the defendant and a judgment for Rs. 8550 in rent arrears from April 1, 1954, to October 31, 1955. Future mesne income had been additionally claimed. The discovered trial Judge held that the match becomes able and got here to the belief that the plaintiff becomes entitled to a decree for ejection in addition to for hire. Regarding the quantity of hire, however, the discovered trial Judge did now

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<sup>10</sup> Bhagwati Prasad v. Shri Chandramaul, A.I.R. 1966 S.C. 735.

no longer be given the plaintiff's model and taken into consideration the query at the merits. He held that pay might be an inexpensive hire for the premises in query and handed a decree for Rs.5, seven-hundred in choose of the plaintiff as arrears of hire. The decree similarly directed the defendant to pay damages with the aid of using manner of use and career on the fee. until the date of ejection. The defendant advocated an enchantment before the Allahabad High Court to overturn the ruling. The High Court has agreed with the trial Court & showed the decree for ejection handed with the aid of using the trial Court.

The High Court, however, set apart the stated decree insofar because it directed the defendant to pay beyond hire on the fee of Rs.300 p.m. In that connection, the High Court has stated the supply of U.P. (Temporary) Control of Rent and Eviction Act (No. III) Of 1947 and held that the cloth provisions of this Act require that no premises might be set free with the aid of using the owner without the permission of the District Magistrate or different suitable government noted in that behalf. Thus, the tenancy now no longer having been proved it'd be beside the point to permit any hire to the plaintiff at all. Therefore, the High Court rejected the plaintiff's case for hire or mesne income. Against this decree, the plaintiff and the defendant filed appeals earlier than Hon'ble Supreme Court with a certificate granted to them with the aid of using the High Court on that behalf.

Issues: The defendant protested the eviction order. Whereas the plaintiff objected to the rejection of his declare for the beyond hire and destiny mesne income.

Judgment: Hon'ble Supreme Court even as confirming the decree handed with the aid of using the High Court brushed off the enchantment favored with the aid of using the defendant and determined, undefined Regarding the plaintiff's declare for beyond hire and destiny mesne income Hon'ble Supreme determined that, "We see no motive to intervene with the decree handed with the aid of using the High Court. However, we do not see how the High Court's decision on future mesne earnings can be upheld. Because, as soon as it's far held that the plaintiff is entitled to eject the defendant, it follows that from the date of the decree granting the relaxation of ejection to the plaintiff, the defendant who stays in ownership of the belongings no matter the decree, ought to pay mesne income or damages to be used and career of the stated belongings till it's far introduced to the A decree for ejection in the sort of case ought to be followed with the aid of using a route

for the price of the destiny mesne income or damages. And consequently, the plaintiff is entitled to destiny mesne income on the fee of Rs.300 consistent with month.

## **CONCLUSION**

Legal rights and treatments for the breach of felony rights are facets of the equal coin. Stated felony rights and treatments for the breach of those rights have usually coexisted. It is supplied withinside the well-known maxim Ubi jus ibi remedium, which approach in which there's proper there's treatment. Accordingly, illegal interference with the immovable assets of every other individual quantity to a breach of a felony proper; and there's a treatment withinside the shape of mesne income for wrongful interference with the assets. Section 2(12) of the Code of Civil Procedure gives for mesne income. According to Section 2(12), the period mesne income pertains to the 'the damages or repayment recoverable from someone who has been in wrongful ownership of the immovable assets. The period mesne income, beneath Section 2(12) of Code of Civil Procedure, additionally encompass inside its ambit hobby on such income, however it does now no longer encompass income made because of development withinside the immovable assets. A plethora of judgment means that the wrongful ownership of the defendant is the very essence of of mesne income. And the instant the plaintiff is a hit in setting up the wrongful ownership of the alternative individual he's entitled to say mesne income. Therefore, our first assumption that the wrongful ownership of the defendant paperwork the idea of mesne income stands true.