
(2010) 09 P&H CK 0442
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3928 of 2007

Bikram Singh and Others

APPELLANT

Vs

Central Bank of India and Another

RESPONDENT

Date of Decision : 10-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 20 Rule 12, Order 20 Rule 12(1), Order 41 Rule 33, 151

Citation : (2011) 161 PLR 156

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Alok Singh, J.—Present petition is filed assailing the order dated 09.04.2007 passed by learned Additional Civil Judge (Senior Division), Gurgaon, thereby rejecting the application, moved by the Plaintiffs/decreed-holders/Petitioners herein for modification/correction of the judgment and decree dated 04.10.1999, moved under Sections 151/152/153 Code of Civil Procedure

2. The brief facts of the present case, inter-alia, are that Plaintiffs - Petitioners herein filed a civil suit No. 148 of 07.03.1991 in the Court of Additional Civil Judge (Senior Division) against the Respondent - tenant contending therein that Respondents were inducted as tenant in the suit property on monthly rent of Rs. 3550/- w.e.f. 1.6.1982. In January, 1991, Plaintiffs - Petitioners terminated the tenancy and asked the Respondents to vacate the suit premises. The suit was decreed on 04.10.1999. Respondents were directed to hand over the vacant possession of the tenanted property. The Court passing the decree has observed that Plaintiffs are entitled to claim damages for use and occupation at the rate of Rs. 6.50% per square feet w.e.f. 01.02.1991 till the date of filing of the suit. Respondents - tenant filed appeal in the court of learned District Judge, Gurgaon, which was dismissed vide judgment and decree dated 02.05.2001. Second appeal before this Court was also dismissed vide judgment dated 03.07.2001.

3. Plaintiff - decree holder claimed mesne profit /damages pendente-lite till the date of delivery of possession before the Executing Court. The learned Executing Court dismissed the application of the decree-holders observing that decree did not specifically mention that decree-holders were entitled to claim the mesne profit w.e.f. 3.7.1991 till 02.07.2001. Against the order dismissing the application, a revision was filed by the decree-holders before this Court, which was dismissed on 06.05.2005. Thereafter, SLP was filed by the decree-holders before the Apex Court, which was also dismissed on 19.09.2005. However, the Apex Court has observed that dismissal of SLP shall not preclude the Plaintiffs to have the decree amended, if under the law, they are entitled to do so. Thereafter, decree-holders moved an application under Sections 151/152/153 Code of CPC for amendment of the decree, contending therein that the Plaintiffs are entitled to damages for the period during the pendency of the suit till handing over the possession of the property by the Bank at the rate of Rs. 16,900/- per month. Application moved by the present Petitioners was dismissed by the learned Executing Court by the impugned order.

4. I have heard the learned Counsel for the parties and have perused the record.

5. Learned Counsel for the Petitioners stated that as per the provision of Order 20 Rule 12 Code of Civil Procedure, Trial Court while passing the decree for possession was duty bound to assess the mesne profits and damages for illegal use and occupation of the property and to direct judgment-debtor to pay the mesne profits so assessed for the period during the pendency of the suit till the date the possession is delivered to the Plaintiffs.

6. Learned Counsel for the Respondents - Bank stated that relief for the mesne profits for the period during the pendency of the suit till the date of delivery of possession was not claimed, hence, it was not granted by the learned Trial Court. Learned Counsel for the Respondents further stated that in an appeal filed by the Defendants -Respondents, Plaintiffs - Petitioners could have filed cross-objections which admittedly Plaintiffs did not file and decree passed by the learned Trial Court was confirmed. Learned Counsel for the Respondents further stated that decree passed by the learned Trial Court was stood confirmed by the Second Appellate Court also where also no cross-objections was filed by the Plaintiffs seeking mesne profits for the period during the pendency of the suit till the delivery of the possession. Learned Counsel for the Respondents further argued that after confirmation of the decree by the second Appellate Court, application for modification/correction of the decree does not lie before the Trial Court. It is further averred by the learned Counsel for the Respondents that the present Petitioners - Plaintiffs had filed another suit No. 261 of 05.10.2002 for recovery of Rs. 26,50,000/- being mesne profits /damages for use and occupation of the building w.e.f. 6.3.1991 to 31.12.2001 with interest at the rate of 9% per annum and that suit was dismissed by the Court vide judgment and decree dated 30.09.2006 holding it as time barred and barred by provision of Order 2 Rule 2 Code of CPC Learned Counsel for the Respondents further stated that in view of

filing of subsequent suit No. 261 of 05.10.2002 and dismissal thereof on 30.09.2006, application for the same relief in the garb of modification /correction of the decree does not lie and is barred by principle of res-judicata.

7. The scope of Sections 152 and 153 Code of CPC are reproduced as under:

152. Amendment of judgments, decrees or orders -Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

153. General power to amend - The Court may, at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

8. From the perusal of Sections 152 and 153 Code of CPC it can safely be said that Court passing the decree is competent to correct any clerical or arithmetical mistakes in judgment, decree and is also competent to set at right any accidental slip or omission either of its own motion or on the application of any of the parties. The Court is also competent to amend any defect or error in any proceeding in a suit and to permit any necessary amendments for the purpose of determining the real question or issue raised by or depending on such proceeding.

Order 20 Rule 12 Code of CPC reads as under:

12. Decree for possession and mesne profits -

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree -

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until -

(i) the delivery of possession to the decree holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under Clause (b) or Clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result

of such inquiry.

Sub-rule (1)(c) of Rule 12 of Order 20 Code of CPC gives jurisdiction to the Trial Court to assess the rent/mesne profits from the institution of the suit until the delivery of possession to the decree-holder.

9. Division Bench of the Calcutta High Court in the case of Kalidas Rakshit Vs. Saraswati Dasi and Others, has held that the omission of an express direction in terms of Order 20 Rule 12 Sub-rule (1) Clause (c) in that decree was an accidental one and could be corrected while exercising the jurisdiction u/s 152 Code of CPC I am in full agreement with the view taken by the Division Bench of Calcutta High Court.

10. However, in the case before the Calcutta High Court claim for mesne profits pendente lite till the date of delivery of possession was made which was not rejected and judgment / decree was silent about the mesne profits which was to be assessed and was to be directed to be paid. However, in the present case, Plaintiffs themselves have not claimed any relief for mesne profits pendente-lite till the delivery of the possession, hence, Court has not passed any order on the question of payment of mesne profits pendente-lite till the delivery of the possession.

11. Not only this, Plaintiffs could have raised plea of the mesne profits pendente-lite till the delivery of the possession in first appeal or second appeal filed by the Defendants by way of cross-objections or by way of arguing the matter invoking Order 41 Rule 33 Code of CPC which admittedly Plaintiffs fail to do. Undisputedly, thereafter, Plaintiffs themselves have filed suit for recovery of mesne profits pendente-lite till the delivery of possession which was dismissed having held as time-barred and barred by Order 2 Rule 2 Code of CPC vide judgment dated 30.09.2006.

12. In me opinion of this Court, first of all, Plaintiff has waived his right by not incorporating the relief in the original plaint claiming mesne profits pendente-lite till the delivery of possession and secondly, the mesne profits for the same period was declined by the Court in a suit filed by the Plaintiffs vide judgment dated 30.09.2006, hence, permitting the Petitioners - Plaintiffs to claim the mesne profits by way of an application under Sections 151/152/153 Code of CPC would mean setting aside the judgment and decree dated 30.09.2006 by which suit filed by me Plaintiffs for recovery of mesne profits for the same period was dismissed. Judgment dated 30.09.2006 would attract principle of res-judicata against the Plaintiffs - Petitioners. Now, Petitioner cannot claim mesne profit pendente-lite till me date of delivery of possession by way of application under Sections 152 and 153 Code of CPC being barred by res-judicata.

13. In view of the above, no interference is called for in the impugned order. Present petition is devoid of merit, hence, is dismissed.