
(2019) 08 CHH CK 0017
In the Chhattisgarh High Court
Case No : SA No. 525 Of 2006

Dayaram @ Dinuram And Ors

APPELLANT

Vs

Dilip Kumar And Ors

RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:

Code Of Civil Procedure 1908 — Section 96, 100

Citation : (2019) 08 CHH CK 0017

Hon'ble Judges : Sanjay S. Agrawal, J

Bench : Single Bench

Advocate : V.K. Sharma, Arun Shukla

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by plaintiffs under Section 100 of the Code of Civil Procedure, 1908.

2. Mr. V.K. Sharma, learned counsel for the plaintiffs submits that both the Courts below are absolutely unjustified in not granting decree for mesne profit despite having granted the decree for possession in favour of the plaintiffs. In that view of the matter both the Courts below ought to have granted decree of mesne profit from the date of decree upto the delivery of possession under Order 20 Rule 12 of CPC. Accordingly, the second appeal involves substantial question of law for determination.

3. I have heard learned counsel appearing for the plaintiffs, considered his submissions and went through the records with utmost circumspection.

4. Plaintiffs filed civil suit for possession and mesne profit which was decreed by learned trial Court but no mesne profit was granted in their favour. Assailing the judgement and decree of the trial Court, only the defendants preferred a first

appeal under Section 96 of the CPC. In that first appeal, the plaintiffs did not make any cross-objection to claim decree for mesne profit and ultimately, the first appeal was dismissed on merits. Now, the plaintiffs have filed this second appeal claiming mesne profit.

5. In the considered opinion of this Court, learned trial Court only granted decree for possession and did not grant decree for mesne profit which the plaintiffs did not assail by filing the first appeal or by making cross-objection. As such, non-grant of decree for mesne profit has become final and now, after dismissal of the first appeal which was filed by the defendants, plaintiffs cannot come up before this Court claiming decree for mesne profit which has attained finality against plaintiffs. I do not find any substantial question of law for determination in this second appeal.

6. The second appeal, being devoid of merits, deserves to be and is accordingly dismissed in limine without notice to the other side. No order as to cost(s).