
(2010) 03 P&H CK 0257
In the Punjab And Haryana At Chandigarh

Ved Parkash and Others

APPELLANT

Vs

Gian Chand and Others

RESPONDENT

Date of Decision : 15-03-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2, 34

Citation : (2010) 03 P&H CK 0257

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Judgement

L.N. Mittal, J.—This is second appeal by plaintiffs, who have been partly successful in the courts below.

2. Plaintiffs filed suit for recovery of mesne profits of land measuring 53 kanals 16 marlas for three years preceding the filing of the suit i.e. for six crops since Kharif-1998 till Rabi-2001.

3. Undisputedly, Karta Ram - predecessor of the defendants was tenant over the suit land under the plaintiffs. Assistant Collector Ist Grade, Kaithal, vide order dated 27.10.1977, ordered ejectment of Karta Ram tenant from the suit land. The said order was upheld up to Hon"ble Apex Court. Hon"ble Apex Court, vide order dated 21.01.1988, allowed Karta Ram to remain in possession of the suit land till allotment of some other five standard acres of land to Karta Ram by State of Haryana, if Karta Ram is found entitled to the same. On the death of Karta Ram, defendants inherited his Estate being his legal heirs. The defendants continued to be in possession of the suit land and remained in possession thereof during the aforesaid period, for which mesne profits have been claimed. Relationship of landlord and tenant between the parties came to an end with the passing of ejectment order dated 27.10.1977. The plaintiffs therefore claimed mesne profits of the suit land for the aforesaid period. Defendants, while admitting the factual position, contended that they have deposited requisite amount for Rabi and Kharif-1998 crops in Tehsil, vide challan dated 19.09.2000 and the defendants were ready to deposit the amount of batai for remaining

crops. The plaintiffs claimed mesne profits @ 1/3rd batai i.e. 1/3rd share of the produce, but the defendants pleaded that the plaintiffs are entitled to 1/4th batai.

4. Learned Civil Judge (Senior Division), Kaithal, vide judgment and decree dated 25.08.2007, decreed the suit for recovery of Rs. 47,805/- as mesne profits being 1/4th share of the produce amount. First appeal preferred by the plaintiffs has been dismissed by learned Additional District Judge, Kaithal, vide judgment and decree dated 28.07.2008. Feeling aggrieved, the plaintiffs have preferred the instant second appeal.

5. I have heard learned Counsel for the parties and perused the case file.

6. After hearing learned Counsel for the parties, I find that following substantial questions of law arise for determination in the instant second appeal:

1. whether plaintiffs are entitled to mesne profits for part of land, which was left uncultivated during some crops?

2. whether plaintiffs are entitled to interest on the amount of mesne profits as part of mesne profits?

7. Learned counsel for the appellants contended that the plaintiffs are entitled to mesne profits even for part of the land, which was left uncultivated by the defendants during some of the crops. On the other hand, learned Counsel for the respondents contended that the respondents could not cultivate part of the land on account of non-availability of sources of irrigation.

8. I have carefully considered the aforesaid contentions. Contention of learned Counsel for the respondents cannot be accepted because in some of the crops, the entire suit land was cultivated and it is only in some of the crops that some land out of the suit land was left uncultivated. It would depict that some part of the land was left uncultivated or vacant without any sufficient reason by the defendants. In fact, there is no plea or evidence to substantiate the aforesaid contention of learned Counsel for the respondents that some part of the land remained vacant for lack of irrigation sources. On the other hand, "mesne profits", as defined in Section 2(12) of the CPC (in short - CPC), means those profits, which the person, in wrongful possession of the 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. It would mean that the profits, although not actually received, but which could be received with ordinary diligence, have to be included within purview of "mesne profits". In the instant case, the defendants with ordinary diligence, could cultivate the entire suit land and if the defendants left some land uncultivated, the plaintiffs cannot be deprived of the mesne profits of the same. Accordingly, substantial question of law No. 1, as framed herein above, is answered in favour of plaintiffs/appellants, holding that they are entitled to mesne profits even for the part of the land, which remained uncultivated in some crops.

9. Coming to substantial question of law No. 2 framed herein above, learned Counsel for the appellants contended the definition of mesne profits, as contained in Section 2(12) CPC itself, says that `mesne profits' means the profits together with interest thereon and thus, interest is part of the mesne profits, to which the plaintiffs are entitled to. Reliance in support of this contention has been placed on a judgment of Hon''ble Supreme Court in the case of Mahant Narayana Dasjee Varu and Others Vs. Board of Trustees, The Tirumalai Tirupathi, Devasthanam, , wherein also it was held that interest is an integral part of mesne profits and has therefore to be allowed in the computation of mesne profits itself. However, it was also laid down that rate of interest is discretionary and is covered by Section 34 CPC.

10. In view of definition of mesne profits, as contained in Section 2(12) CPC and interpretation thereof by Hon''ble Supreme Court in the case of Mahant Narayana Dasjee Varu and Ors. (supra), the appellants are also entitled to interest on mesne profits and therefore, the second substantial question of law framed herein above is also answered in favour of the appellants.

11. Now, coming to the computation of the mesne profits for uncultivated part of the land during the relevant crops, learned Counsel for the parties jointly submit that as per their calculation, the amount comes to Rs. 53,540/-, of which the plaintiffs are entitled to 1/4th share i.e. Rs. 13,385/-. As regards rate of interest, in my considered opinion, appellants should be awarded interest @ 9% per annum on amount of mesne profits (including that awarded by the trial court as enhanced by this Court) from the due dates i.e., 15th December and 15th June each year till 25.08.2007 - the date of decision of the trial court and thereafter @ 6% per annum till recovery. It is ordered accordingly.

12. With aforesaid modification in the judgments and decrees of the courts below, the instant second appeal stands disposed of.