

RFA No.21 of 2024

23.09.2026 Present: Mr. Ajay Kumar, Senior Advocate, with Mr. Gautam Sood, Advocate, for the appellant.

Mr. Ajuj Gupta, Advocate, for respondents No.1(a) & 2 to 6.

Mr. Anil Chauhan, Advocate, for respondent No.11.

Mr. Manoj Chauhan, Additional Advocate General, for respondents No.12.

None for the remaining respondents.

CMP No.14044 of 2026

The present application has been filed on behalf of applicants/respondents No.1(a) & 2 to 6, under Order 41, Rule 5(3)(C), read with Section 151 of CPC, for fixing the use and occupation charges.

2. Reply to the application has been filed by the non-applicant/appellant.

3. I have heard learned counsel for the appearing parties and have also gone through the records.

4. Perusal of the material available on record reveals that, vide judgment and decree dated 22.04.2024, passed by the learned District Judge, Shimla, HP, the suit filed by the plaintiffs (applicants/respondents No.1(a) & 2 to 6 herein) was partly decreed and they were held entitled for the decree of possession of the suit property 'Chillingham' situated at

Station Ward Chotta Shimla (East), Shimla, District Shimla and defendant No.5 (non-applicant/appellant herein) was directed to vacate the premises forthwith and to handover the vacant possession of the suit property to the applicants/plaintiffs.

5. As per the applicants, since the non-applicant-appellant has been held to be a trespasser in the suit property 'Chillingham Estate' and was directed to vacate the suit premises and hand over the possession to the applicants/plaintiffs, therefore, he is liable to pay mesne profits or compensation at the prevalent market rate of rent to the applicants/plaintiffs for the illegal use and occupation of the suit property. Hence, it is prayed that the non-applicant/appellant may be directed to pay just, fair and reasonable mesne profits or compensation to the applicants for the illegal use and occupation as determined by the Court from the date of the impugned judgment & decree dated 22.04.2024 till the final adjudication of the appeal.

6. In ***Ganapati Madhav Sawant (dead) through his LRs. Vs. Dattur Madhav Sawant, (2008) 3 SCC 183***, the Hon'ble Supreme Court in para-2 of the judgment held as under:-

"3. Learned counsel for the appellant submitted that while issuing notice in the Second appeal, the High Court categorically observed as follows:

'The next ground argued by the learned counsel for the appellant is that the plaintiff did not pray for an inquiry with the mesne profit to be held under Order XX Rule 12 in the plaint and in the absence of specific prayer for an inquiry into the mesne profits the same should not have been granted by the courts below. The said directions is contained in clause IV in the operative part of the judgment and decree of the trial court. The learned counsel for the appellant has placed reliance of the judgment of the Apex Court reported in AIR 1952 Supreme Court 358 Mohammad Amind and Others Vs. Vakil Ahmed and others and to precise para 20 thereof. In this view of the matter issue notice before admission returnable in six weeks touching only clause IV of the operative part of the order passed by the trial court directing the inquiry in regard to mesne profits under Order XX Rule 12. The respondents be intimated that the appeal will be finally heard and decided at admission stage.'

7. Similarly, the Hon'ble Supreme Court in **Civil Appeal No.4589 of 2012**, titled **M/s Bird Travels P. Ltd. Vs. Amarjit Kaur & ors.**, decided on 11.05.2012, held as under:-

".... The fixation of mesne profits would require evidence from both sides. We are, therefore, of the view that the dispute relating to the rate of mesne profits must be determined by the Rent Controller, Chandigarh after holding appropriate enquiry."

8. Hence, in view of the aforesaid decision of the Hon'ble Supreme Court, in case of dispute relating to mesne profits, an enquiry is required to be held and requires evidence from both sides. Therefore, before any order further is passed on the present application, the learned District Judge, Shimla, HP is directed to conduct an inquiry with respect to the mesne profits/ use and occupation charges and to send the report to this Court before **31.12.2026**. The parties will be granted opportunity to lead such evidence as they may deem fit and

proper. The parties are directed to appear before the learned Trial Court on **28.09.2026**. Record of the learned District Judge be sent back forthwith, through a special messenger.

9. Now, list the case before this Court on 04.01.2027, to await the report from the learned Trial Court.

(Sushil Kukreja)
Judge

September 23, 2026
(V.Himalvi)