

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

I.

Regular Second Appeal No.1715 of 2015 (O&M)

Date of decision: 1.5.2015

Balwan Singh

... Appellant

Versus

Ravi Bala Jain and others

... Respondents

II.

Regular Second Appeal No.1716 of 2015 (O&M)

Balwan Singh

... Appellant

Versus

Ravi Bala Jain and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Harkesh Manuja, Advocate,
for the appellant.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.(Oral)

This order will dispose of two RSAs No.1715 of 2015 and 1716
of 2015 as the dispute in both the appeals are between the same parties.

RSA No.1715 of 2015 relates to possession while the other RSA No.1716

involves the question of mesne profits. The appeal for possession, i.e., RSA No.1715 of 2015 is taken first for disposal.

RSA No.1715 of 2015

2. This is defendant's second appeal from a suit where the plaintiffs succeeded in obtaining a decree for possession and mesne profits against the defendants who have encroached over 27 square yards of land belonging to the plaintiffs by opening a door from their property which was purchased by the defendant from the plaintiffs by a registered sale deed. The sale deed was for 31 square yards. The defendant took the stand that the sale deed actually comprised 58 square yards and a fraud was committed by the vendor in the sale deed by restricting it to 31 square yards and, therefore, he was not an encroacher and was not liable to pay mesne profits. The Courts below have disbelieved this testimony and have confined the parties to the recitals in the sale deed which was duly registered in the office of the Sub-Registrar, Panipat. It is not possible to believe that the vendee-defendant was an innocent purchaser of less land than he bargained for and I endorse the findings of the Courts below on this aspect.

RSA No.1716 of 2015

3. The issue with respect to mesne profits was struck for trial at issue No.4. Learned trial Court held the defendant-appellant in wrongful possession of the property beyond the sale deed and also recorded a finding of fact that the defendant-appellant had constructed a laterine over the land encroached but still declined to award mesne profits for the fallacious reason that nowhere it had come on record that some profit was being derived from the said construction by way of lease etc. by the defendant.

Hence it cannot be said that the plaintiffs are entitled to the use and occupation charges @ ₹ 2,000/- per month as prayed for in the suit. The learned trial Court decided the issue in favour of the defendant and against the plaintiffs.

4. In appeal, the learned lower appellate Court reversed the finding of the learned trial Court and held the plaintiffs were entitled to a decree for mandatory injunction besides mesne profits @ ₹ 2,000/- per month for illegal use and occupation of the demised property by the defendant. Learned trial Judge was misled to believe that the profits must be derived from unauthorised possession of property before the mesne profits can follow, ignorant of the legal position that mesne profits are not based on profits earned by encroacher but on the principles of use and occupation of land. However, what quantum of mesne profits should represent compensation is a matter of evidence and discretion of the Courts. The Courts are well within their discretion to award reasonable mesne profits even by application of rule of thumb and the lower appellate Courts remain the best Judge of market values obtaining in their respective sessions divisions and when they form an opinion, it is not for this Court in regular second appeal to upset that finding unless the quantum fixed is strikingly disproportionate or inflated to the true value of rental rates. So long as it remains within the finding of reasonably perceived rent of properties of the size and location involved in this case, i.e., 27 square yards, I do not think, this Court should embark upon an adventure of tinkering with the quantum of mesne profits fixed by the appellate decree only to arrive at a different conclusion. In any case, such an issue can hardly give rise to a substantial

question of law in terms of Section 100 CPC and within its limitations.

5. The other reason why I would not like to interfere in appeal is that the defence taken was not genuine or bonafide nor was there any rebuttal that no construction is made on the encroached land by the defendant-appellant. Where the stand is false, then equity fails to reach the point of relief.

6. For the above reasons, both the appeals are without merit and are ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

May 1, 2015
Paritosh Kumar