

240

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

CR-859-2015

Date of decision : 09.02.2016

Deep Kaur

...Petitioner

Versus

Rattan Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Ms. Sonia G. Singh, Advocate
for the petitioner.

Mr. Amit Dhawan, Advocate
for respondents No.1 to 5 & 7.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the order dated 08.01.2015, dismissing the application seeking amendment of the plaint by incorporating the following two amendments:-

"(i) That the head note of the original plaint is liable to be deleted and in its place, the following new head note is liable to be inserted in the Amendment Plaint:-

*"Suit for grant of decree for **Mesne Profits** of land measuring 45 Kanal comprised in Khewat/Khatoni No.163/225, 163/226, 163/227, 163/228 & Khasra No.99//18 min(5-0), 23(8-0), 99//19min(6-0), 20 Min(5-0), 99/119 Min (2-0), 20 min (3-0), 21 Min (&-0), 22 Min*

(4-0), 99//21 (1-0), 22 Min (4-0) as per jamabandi for the year 2006-07 situated in the revenue estate of village Parjian Khurd, Hadbast No. 319, Tehsil Shahkot, District Jalandhar from all the defendants along with interest at the rate of market interest from the year 2005 to till date of vacation of illegal and unauthorized possession of the defendants as trespasser from the aforesaid property i.e. Suit property by decree of court or otherwise"

ii) That the para No. 4 of the original plaint is liable to be deleted and in its place, the following new para No. 4 is liable to be inserted in the Amendment Plaint: -

4) That the plaintiff had approached the revenue authorities and obtained the Naksha Normal Rate containing the value in rupees of sum which all the defendants have earned from the property i n dispute during their illegal possession over the suit property. As per the Naksha Normal Rate, plaintiff is entitled for the amount of Rupees 28,257/- from Sauni 2005 to Hari 2008 and for Rupees 28,607/- from the Sauni 2008 to Hari 2011 from the defendant No. 1. Similarly, as per the Naksha Normal Rate, plaintiff is entitled for the amount or Rupees 44,693/- from Sauni 2005 to Hari 2008 and for Rupees 1,16,416/- from the Sauni 2008 to Hari 2011 from the defendant No. 2 & 3. Similarly, as per the Naksha Normal Rate, plaintiff is entitled to the amount of Rupees 80,594/- from Sauni 2005 to Hari 2008 and for Rupees 1,22,740/- from the Sauni 2008 to Hari 2011 from the defendant No. 4 & 5. Similarly, as per the Naksha Normal Rate, plaintiff is entitled to the amount of Rupees 58,481/- from Sauni 2005 to Hari 2008 and for Rupees 73,072/- from the Sauni 2008 to Hari 2011 from the defendant No. 6 (i) to 6 (viii) and defendant No. 7. It is pertinent to mention over here that suit property is in

illegal occupation and possession of all the defendants and they are getting cultivated the same are earning huge amount from the same for which they have got no right, title or concern to do so rather they all are liable to give account of all the money earned by them from the suit property to the plaintiff. Hence, the present suit.

(iii) That the following new para 5 A is liable to be inserted in the Amended Plaintiff.

4 A. That out of the suit property, some of the portion is a constructed one on the spot and same is used by all the defendants for their residential accommodation. Had plaintiff inducted any tenant in this constructed portion, then certainly he would have earned rent from the same upto extent of Rupees 10,000/- to ₹ 20,000/-. So in these circumstances, plaintiff is also entitled to mesne profit of residential accommodation as well. Hence, the present suit.

(iii) That the para No. 8 of the original plaintiff is liable to be deleted and in its place, the following new para No. 8 is liable to be inserted in the Amended plaintiff: -

"8. That the value of the suit for the purpose of Court fee is yet to be determined by the Hon'ble Court as present suit is suit for mesne profit which are unliquidated sum and same will be determined or liquidated by the Court at the time of the final decision of the present suit. So, plaintiff undertake that he will affix the Court fee on that sum when that sum will be determined by the Hon'ble Court at the time of granting of the decree. So, for the time being, plaintiff had already affixed the tentative court fees stamp of ₹ 3,175/- on the original plaintiff at the time of the filing of the present which is liable to be adjusted with the actual required court fees, at the time of depositing of actual required court fee as per the final decision of the Hon'ble Court.

(iv) That the para No. 9 of the original plaint i.e. prayer clause is liable to be deleted and in its place, the following new para No. 9 (new prayer clause) is liable to be inserted in the Amended Plaint: -

"It is, therefore, prayed that suit of the plaintiff as fully prayed for in the head note of the plaint be decreed and a decree for Mesne profits of the suit property from all the defendants alongwith interest at the rate of market interest from the year 2005 to till the date of vacation of illegal and unauthorized possession of the defendants as trespasser from the aforesaid suit property be passed in favour of the plaintiff's LRs and against the defendants in the interest of justice, equity and fair play. Any other relief which the Court may deem fit as per circumstances of the case be also granted in the interest of justice, equity and fair play.

(vi) That the following new para 8-A is liable to be inserted in the amended plaint.

8A. "That plaint has been amended as per order of the Hon'ble Court.

Ms. Sonia G. Singh, learned counsel appearing on behalf of the petitioner submits that instead of claiming the recovery of mesne profits, inadvertently the suit for recovery has been mentioned, viz-a-via the other relief, the amount has been claimed till date as the suit which was filed in 2002, and thus, the trial Court has committed the illegality and perversity in declining the application in toto.

Mr. Amit Dhawan, learned counsel appearing on behalf of respondents, submits that the second amendment incorporating the relief of mesne profits till the filing of the suit, is ex facie time

barred, which is not permissible in law and rightly so, the trial Court has dismissed the application and prays for dismissal of the revision petition.

I have heard the learned counsel for the parties and appraised the paper book.

I am in agreement with the plea submitted by Mr. Amit Dhawan, Advocate viz-a-viz the second relief sought to be caused in paragraph 4 onwards is based by law of limitation.

Accordingly, the amendment application changing the nomenclature of the suit for mesne profits as prayer clause, viz-a-viz, the same is allowed and the rest of relief is declined as the aforementioned observations would not alter and change the cause of action, much less, extend the period of limitation.

With the aforementioned observations, the application is partly allowed.

Accordingly, the revision petition stands disposed of.

09.02.2016
yogesh

(AMIT RAWAL)
JUDGE