

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No. 3227 of 2015

Date of Decision:03.10.2017

Kesar Singh Deceased through
LR. Sona Singh @ Santa Singh & others ... Petitioners

Versus

Kakka Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Dadwal, Advocate,
for the petitioners.

Mr. Kamal Narula, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1] Petitioners have assailed the order dated 02.01.2015 passed by Additional Civil Judge (Sr. Divn.), Ferozepur, whereby mesne profits were assessed at the rate of Rs. 2 lakh per year from Rabi 1995 onwards and the petitioners were directed to deposit the same within a specified period in the shape of FDR in the State Bank of India.

[2] Learned counsel for the petitioners submitted that Additional District Judge, Ferozepur in the appeal arising out the judgment and decree dated 17.05.2010 passed by Additional Civil Judge (Sr. Divn.), Ferozepur set aside the judgment and decree of the trial Court and decreed the suit for possession as prayed for and for mesne profits @ Rs. 2 lakh per year from Rabi 1995 till delivery of possession with costs. The said judgment and decree was passed on

21.01.2011.

[3] Against the aforesaid judgment and decree dated 21.01.2011, RSA No. 1422 of 2011 was preferred in the High Court. While passing order dated 06.09.2014 in the aforesaid appeal, order dated 02.05.2002 passed in RSA No. 1344 of 2002 was relied, wherein the appellants were directed to deposit the mesne profits after determination by the trial Court in an application filed by the appellants. Such determination was to be made after due notice to the respondents. The mesne profits so determined were to be deposited with effect from the date of filing of the suit. The order was relied to the same effect in RSA No. 1422 of 2011 and the appellants were held entitled to move an appropriate application before the trial Court within a specified period. In the event of moving such an application, the trial Court was obligated to make every endeavor to dispose of the same at the earliest after due notice to the respondents.

[4] Thereafter, an application was filed by the petitioner in compliance to the aforesaid order for assessment of the mesne profits and granting permission for depositing the same vide application dated 19.09.2014. The said application has been decided by the trial Court vide impugned order even after recording the factum of the orders passed in RSA Nos. 1344 of 2002 and 1422 of 2011. The trial Court has made its conclusion on the basis of judgment and decree dated 21.01.2011 passed by Additional District Judge, Ferozepur whereby mesne profits were assessed @ ₹ 2 lakh per year

from Rabi 1995 onwards till delivery of the possession. The aforesaid arrangement was further relied upon in the aforesaid two RSAs and the assessment of mesne profits was to be made by the trial Court on an application to be filed by the petitioners. Having done so, the trial Court was not correct in relying upon the judgment and decree dated 21.01.2011, rather the trial Court was to assess the mense profits afresh in the light of the interim orders passed in the aforesaid two regular second appeals.

[5] In view of above, impugned order dated 02.01.2015 passed by Additional Civil Judge (Sr. Divn.) is set aside. This revision petition is accordingly accepted. The trial Court is directed to decide the application dated 19.09.2014 strictly in compliance to the order dated 02.05.2002 passed in RSA No. 1344 of 2002 and order dated 06.09.2014 passed in RSA No. 1422 of 2011.

[6] Disposed of accordingly.

(RAJ MOHAN SINGH)
JUDGE

03.10.2017
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>