

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

RSA-5305-2017 (O&M)
Date of Decision: 06.08.2018

Pushpa Rani (since deceased) through her
son Rajesh Gupta

--Appellant

Versus

Surjit Singh & another

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. S.K. Arora, Advocate for the appellant.

TEJINDER SINGH DHINDSA.J (Oral)

Plaintiff filed a suit for possession of land measuring 5 kanals 2 marlas comprised in Rect. No.34, Killa No.25/1(5-2) situated in Village Chack Tahliwala, Tehsil Jalalabad along with mesne profits by way of damages for the unauthorized use and occupation of the said land for the crop session Harhi 2005 till delivery of actual possession along with interest @ 2% per annum till realization. Trial Court vide judgement dated 29.8.2013 decreed the suit of the plaintiff for possession against the defendant and further held the plaintiff entitled to mesne profits @ Rs.15,000/- per annum per acre w.e.f. 16.1.2006 till the filing of the suit. Defendants filed a civil appeal assailing the judgement and decree passed by the Trial Court. Plaintiff filed cross objections seeking modification of the Trial Court judgement to the extent that mesne profits for the paddy crop had not been assessed and that the relief was given till the filing of the suit but it ought to be given till actual delivery of the possession of the land.

The Lower Appellate Court vide judgement dated 16.11.2016 has dismissed the appeal filed by the defendants and has allowed the counter claim preferred by the plaintiff to the extent that mesne profits have now been re-assessed @ Rs.30,000/- per annum per acre w.e.f. 16.1.2006

till actual delivery of the possession of the land in question.

Plaintiff-appellant is in second appeal before this Court.

Mr. S.K. Arora learned counsel representing the plaintiff-appellant states that relief of possession that had been sought already stands granted by the Trial Court and affirmed by the Lower Appellate Court. The short grievance set forth is that the mesne profits assessed @ Rs.30,000/- per annum per acre are on the lower side and should have been determined @ Rs.40,000/- per annum per acre approximately. It is argued that even as per deposition of the defendants' witness i.e. DW-1 Sucha Singh, Sarpanch the mesne profits would require enhancement.

Having heard counsel at length and having perused the case paper book, this Court is of the considered view that no basis for interference is warranted.

Trial Court while decreeing the suit of the plaintiff-appellant herein and granting relief of possession had assessed mesne profits @ Rs.15,000/- per annum per acre. In the cross objections preferred by the plaintiff, modification was sought on the ground that the mesne profits had been determined only by taking into account the wheat crop and the paddy crop had been overlooked. During the course of arguments, counsel would concede that the approximate value fetched by both the crops per quintal is the same. The Lower Appellate Court has factored in the paddy crop as well while assessing the mesne profits and doubled the amount to Rs.30,000/- per annum per acre. This Court in second appeal would not enter into any exercise of redetermination of such mesne profits.

Another factor which has weighed with this Court while declining to interfere in the present second appeal is that admittedly an issue

with regard to ownership of the suit property *inter se* the parties is pending before this Court. The Lower Appellate Court has accordingly passed directions that the mesne profits so assessed would be deposited in the court and would only be released after the decision taken by this Court re: ownership.

The instant appeal does not raise any question of law much less a substantial question of law.

The judgement dated 16.11.2016 passed by the Lower Appellate Court does not suffer from any patent infirmity.

Instant appeal is, accordingly, dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

06.08.2018
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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No