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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM (M) 488/2017**

PREM KUMAR & ANR.

..... Petitioners

Through: Mr. Parveen Kumar Aggarwal and
Mr. Abhishek Grover, Advocates.
(M:9999019898)

versus

ALOK KUMAR VERMA & ANR.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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14.01.2020

1. The present petition challenges the impugned order dated 16th January, 2017 by which the application for amendment of the plaint and to add the reliefs of *mesne* profits and damages has been allowed by the Trial Court. The contention of Id. counsel for the Petitioners/Defendants (*hereinafter*, “*Defendants*”) is that since the trial in the matter has already commenced, unless there was proof of due diligence, the amendment could not have been allowed.

2. A suit for possession was filed in respect of property bearing no. C-556/1463, Wazir Nagar, Street No.5, Kotla Mubarakpur, Opposite Defence Colony, New Delhi-110003 (*hereinafter*, “*suit property*”). The relief prayed for in the suit is for possession and prohibitory injunction. However, by means of the present application, the Respondents/Plaintiffs (*hereinafter*, “*Plaintiffs*”) sought to add the reliefs of *mesne* profits and damages. The reason given in the plaint, as well as the application seeking amendment, is that the Plaintiffs are senior citizens who had personal relations with the

Defendants, because of which they had initially thought of not claiming the *mesne* profits and damages, however, since the Defendants started to contest the suit and refused to hand over possession of the suit property, they decided to file the application for amendment. Various medical grounds have also been given in the application to justify the filing of the amendment application.

3. Ld. counsel for the Defendants, however, submit that the finding of the Trial Court that due to their relations with the Plaintiffs, they had not claimed *mesne* profits and damages, itself proves that the Plaintiffs had waived their right to claim *mesne* profits and damages.

4. After perusal of the plaint and the amendment application, as also the impugned order, there is no doubt that the relief of *mesne* profits and damages was not sought in the first place. Further, the case of the Plaintiffs that the Defendants were introduced to them through a spiritual guru and therefore they did not claim *mesne* profits and damages does not seem to be an unreasonable explanation. In the case of *mesne* profits, the settled position has been laid down in the judgment in ***Smt. Santosh Arora & Ors. v. Shri M. L. Arora [FAO (OS) 579/2013, decided on 13th May, 2014]***, wherein it has been held that even if *mesne* profits is not claimed in the first suit, a subsequent suit can be filed to claim the same, however, the period for which such a claim can be made is only for the period of three years, prior to the filing of the suit. The relevant portions of the judgment of the Id. Division Bench is set out below:

“16. The law permits a claim for future mesne profits i.e. for a relief, the cause of action wherefor has not accrued to the plaintiff on the date of the institution of the suit, only when such a relief is coupled with the

relief of recovery of possession of immovable property. No relief of recovery of possession has been sought in the second suit as indeed it could not owing to the said relief having been sought in the first suit. The second suit is only for recovery of mesne profits for three years prior to the institution thereof. Once the respondent / plaintiff gives up the claim for future mesne profits, even if only till 1st June, 2009 from the first suit, the respondent / plaintiff, to be entitled to mesne profits for the period from 1st June, 2012 till the date of recovery of possession, would have to file successive suits every three years if not earlier and we fail to see as to how expenditure in Court Fees and towards litigation costs in each of the said suits would be in the interest of the respondent / plaintiff.

17. In the same vein, the appellants / defendants though gainer from the respondent / plaintiff giving up totally the relief of future mesne profits from the first suit, are unnecessarily resisting the same.

18. This Court is however to act in the interest of the litigating parties and to avoid multiplicity of litigation and for which reason we reject the offer / statement of the counsel for the respondent / plaintiff of giving up the claim for future mesne profits from the first suit.

19. The true legal position may be summed up as under:-

*A. The cause of action for a relief of recovery of mesne profits is separate and distinct from a cause of action for the relief of possession (See **Gurudwara Baba Zorawar Singh and Baba Fateh Singh Ji Regd. Society Vs. Shri Piara Singh and Sons** 141 (2001) DLT 228 (DB), **Shri Prem Singh Verma Vs. Girdhari Lal Dhara** MANU/DE/2207/2008 (DB), **S. Santokh Singh Vs Gurbux Singh** MANU/DE/0704/2001 (DB) & **Syndicate Bank Vs. Raj Kumar Tanwar** 154(2008) DLT 230(DB)).*

*B. Thus even if in a suit for recovery of possession of immovable property, the relief of mesne profits has not been claimed, a second suit lies for recovering mesne profits for the period subsequent to the filing of the suit for recovery of possession; of course for the recovery of mesne profits as far as within limitation. Reference in this regard can be made to **Shiv Kumar Sharma Vs. Santosh Kumari** (2007) 8 SCC 600.*

*C. However a claim for mesne profits for the period prior to the institution of the suit for recovery of possession according to **Channappa Girimalappa Jolad Vs. Bagalkot Bank** AIR 1942 Bom 338 (DB) has to be made along with the suit for recovery of possession and cannot be made subsequent to the filing of the suit for recovery of possession but according to the majority judgment of the Full Bench of the Punjab & Haryana High Court in **Sadhu Singh Vs. Pritam Singh** AIR 1976 P&H 38 the same can be made by a separate suit as well.*

D. Order 20 Rule 12 of the CPC requires the Court, in a suit for recovery of possession of immovable property and for rent or mesne profits, to, besides passing decree for possession, also pass a decree for mesne profits or direct an enquiry as to such mesne profits, for the period prior to the institution of the suit if claimed and if within limitation on the date of institution of the suit, and for the period, from the date of institution of the suit until delivery of possession.

*E. The Supreme Court in **R.S. Madanappa Vs. Chandramma** AIR 1965 SC 1812 & **Bhagwati Prasad Vs. Shri Chandramaul** AIR 1966 SC 735 has held that where in a suit for recovery of possession a claim for recovery of mesne profits for the period till the date of institution of the suit is made, even if no claim / prayer for recovery of future mesne profits from the date of institution of the suit till the date of delivery of possession is made, Order 20 Rule 12 mandates the*

Court to direct such an enquiry into future mesne profits.

F. The reason for the aforesaid is not hard to fathom; the intent is to avoid multiplicity of suits for mesne profits for successive period after the date of the institution of the suit; each of such suits would have to be filed for recovery of mesne profits for a maximum period of three years, to avoid the defence of the claim for mesne profits having become barred by time.

G. No claim for mesne profits can be allowed without first finding the defendant being in unauthorized occupation of the premises, as is evident from definition thereof in Section 2(12) of CPC.”

5. In view of the above legal position, since the Defendants continue to remain in possession of the suit property, the Plaintiffs are entitled to claim *mesne* profits and damages even in a subsequent suit, however, the same would only relate to the three years' period prior to the institution of the said suit. Insofar as the period prior to the filing of this suit is concerned, the same ought to have been claimed in the said suit. Ld. counsel for the Plaintiffs has fairly conceded that he does not claim *mesne* profits for the period prior to 2013. Since the amendment was only sought in 2013, in order to avoid multiplicity of litigation, the amendment to seek *mesne* profits and damages was rightly allowed, however the same shall only relate to a period of three years, prior to the filing of the application for amendment and not beyond.

6. In view of the explanation given by the Plaintiffs, coupled with the fact that the suit has now proceeded to trial, fresh issues have been framed, the Defendants have filed their amended written statement and evidence has also commenced in the matter, this Court deems it appropriate not to

interfere in the impugned order. The suit for possession shall now be proceeded with expeditiously by the Trial Court.

7. With these observations, the petition is disposed of in the above terms. All pending applications are disposed of.

PRATHIBA M. SINGH, J.

JANUARY 14, 2020/dk