

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO.624 OF 2024
IN
SUIT NO.1342 OF 2003**

Pushpalata Sohanlal Sharma ...Applicant/
Plaintiff

In the matter between :

Pushpalata Sohanlal Sharma ...Plaintiff

V/s.

Brij Madanlal Sharma & Ors. ...Defendants

Mr. Mahek Kamdar (On VC) i/by Kanga & Co. for Applicant.

Mr. Malcolm Singapaori (On VC) a/w Mr. Yash Sinha i/by Tushar
Goradia Advocates for Defendant Nos. 2a and 3.

Mr. Yatin Malwankar for Respondent- Rekha Sharma.

CORAM : MADHAV J. JAMDAR, J.

DATE : 9th October 2024

PC. :

1. The Interim Application is taken out for deletion of the name of Defendant No. 1 from the cause title of the captioned suit and to make other consequential amendments in the Plaint. It is stated in the Interim Application that the Defendant No.1 has passed away on 4th December 2023.

2. It is the contention of learned Counsel for the Defendants that the Suit itself is disposed of on 7th August 2015 and therefore the

Application is not maintainable.

3. The operative part of the judgment and decree passed on 7th August 2015 in Suit No. 1342 of 2003 is as follows:

“1. The plaintiff is declared to be the owner of the suit premises being Flat Nos.1 and 2 on the ground floor and a garage and servants' quarters in building Indrayani situate at Sophia College Lane, 61D, Bhulabhai Desai Road, Mumbai 400 026. It is declared that the defendants have no right, title and interest in the above suit premises or in the share certificate bearing No.7 for share Nos.31 to 35 which has been issued in the name of the plaintiff, Pushpa S Sharma.

2. The plaintiff shall be entitled to be handed over and the defendants shall handover the share certificate of the above suit premises taken by Madanlal from the then secretary of the society on 20th February, 1984 to the plaintiff.

3. The defendants shall handover vacant and peaceful possession of the suit premises to the plaintiff within 8 weeks from today.

4. The plaintiff shall be entitled to mesne profits on account of the wrongful occupation of the defendants in the suit premises. The plaintiff shall be entitled to pursue her claim for mesne profits before the Commissioner for taking accounts in accordance with the rules of this Court in that behalf.

5. The defendants shall pay costs of the suit fixed at Rs.2 lacs to the plaintiff.”

(Emphasis added)

Clause No.4 of the operative part of the judgment and decree dated 7th August 2015 clearly directs that the Plaintiff shall be entitled to mesne profit on account of the wrongful occupation of Defendants in the suit premises and further that the Plaintiff shall be entitled to pursue her claim for mesne profits before the Commissioner for taking accounts in accordance with the rules of this Court in that behalf.

4. Learned Counsel for the Applicant/Plaintiff relies on the judgment of the Supreme Court in the case of ***Choudappa & Another Vs. Choudappa since Deceased by LRs and Others***¹. He relies on paragraph nos. 11,12 and 13 of the same, which read as under:

“11. The aforesaid analogy with regard to the preparation of the final decree pursuant to the preliminary decree for partition can very well be applied to the cases where a decree is passed with a direction to hold an inquiry with regard to determination of mesne profits. This is evident from the plain reading of Order XX Rule 12 CPC For the sake of convenience, Order XX Rule 12 CPC is reproduced herein below:—

“12. Decree for possession and mesne profits.—

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree—

(a) for the possession of the property;

(b) for the rents which have accrued on the property during the period prior to the

¹ (2024) SCC Online SC 2557

institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever, event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.”

12. *It is in the light of the aforesaid provision that the Court of first instance while passing the judgment and order dated 12.07.1973 had specifically stated as under:*

“An inquiry be held regarding future mesne profits of the said suit lands from the date of the suit, that is 24-9-1963 under Order 20 Rule 12(a) CPC”

13. *Now, such an inquiry is nothing but a continuation of the suit and is in the nature of preparation of the final decree and as such, it cannot be said that any application moved as a reminder for completing the inquiry is barred by limitation or is liable to be dismissed on the ground of delay or laches.”*

(Emphasis added)

5. Thus, there is no substance in the contention raised by the learned counsel for the Defendants that the Suit is disposed of by Judgment and Decree dated 7th August 2015 and therefore the Interim Application is not maintainable.

6. Accordingly, Interim Application is allowed in terms of prayer clause (a).

7. Amendment be carried out within a period of 14 days from today. Amended copy be served on all the Defendants within 7 days thereafter.

8. The Interim Application is disposed of in above terms with no order as to costs.

(MADHAV J. JAMDAR, J.)