

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****I.****RSA-3666-2014 (O&M)****BALBIR SHARMA**

... APPELLANT

Vs.

GOVT. OF JAMMU & KASHMIR

... RESPONDENT

II.**RSA-3669-2014 (O&M)****BALBIR SHARMA**

... APPELLANT

Vs.

GOVT. OF JAMMU & KASHMIR

... RESPONDENT

Reserved on: 25.02.2025**Date of Decision: 28.02.2025****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**Argued by:- Mr. Rajinder Sharma, Advocate,
for the appellant.

Mr. Rahul Dev Singh, Advocate, for the respondent.

DEEPAK GUPTA, J.

Suit for possession and mesne profit in respect of property in dispute filed by plaintiff-Government of Jammu and Kashmir (*respondent herein*) was decreed partly by the trial Court on 27.01.2012 for decree of possession, declining the relief of mesne profit.

2. Against the above judgment, both the parties went in appeal. Plaintiff approached the Appellate Court against the judgment of the trial Court, whereby the relief for mesne profit was declined; whereas, defendant filed the appeal against decree of possession. Both the appeals were disposed of vide common judgment dated 08.05.2014 by the First Appellate Court, whereby the appeal of the defendant was dismissed. However, the appeal of the plaintiff-Government of Jammu Kashmir was allowed for grant of mesne

profit. Defendant was directed to pay arrears of mesne profit w.e.f. May 1983 @ ₹10,000/- per annum till filing of the suit i.e. 20.09.2006 and thereafter @ ₹18000/- per annum till handing over the vacant possession of the suit property to the plaintiff.

3. Against the aforesaid judgment dated 08.05.2014, these two Regular Second Appeals have been filed by the defendant of the case; one against the judgment, whereby the suit of the plaintiff for possession was decreed and the appeal of the defendant was dismissed; and the other against the grant of mesne profit by the Appellate Court.

4. Admittedly, suit property was given on lease by the plaintiff to Sh. Har Parkash Sharma, the father of the defendant on 15.04.1967 @ ₹800/- per annum lease money for the purpose of Lime Furnace (Industry) as per writing Ex.P2. Lease period has since expired. No lease money in respect of the suit property has been paid to the plaintiff after April 1983 and now it is the defendant, the son of the original lessee, who is alleged to be in illegal occupation of the property as a trespasser. After serving notice under Section 106 of the Transfer of Property Act, 1882, plaintiff filed the suit seeking possession of the suit property along with the grant of mesne profit by claiming that at present, rental market value of the property was not less than ₹2000/- per month.

5. Defendant resisted the suit on the ground that after the death of his father, he being his legal heir had come into possession of suit property as tenant and had paid the rent to the plaintiff. According to him, he had made last payment of rent to the tune of ₹17,600/- to the defendant through a bank draft dated 19.04.2004. He denied his possession on the suit property to be illegal or unauthorized and further denied his liability to pay any mesne profit. He further denied the market value of the suit property was ₹2,000/- per month and prayed for dismissal of the suit.

6. Necessary issues were framed. Evidence produced by the parties was taken on record. Learned trial Court came to the conclusion that defendant was in illegal occupation of the suit property being a trespasser, as the lease

period had already expired and despite legal notice served upon him under Section 106 of the Transfer of Property Act, 1882, he had failed to vacate the property. However, the relief of grant of mesne profit was declined by the trial Court.

7. As observed above, both the parties went in appeal. The First Appellate Court accepted the appeal of the plaintiff for grant of mesne profit but dismissed the appeal of the defendant against the decree of possession.

8. Before this Court, counsel for the appellant-defendant has not pressed for his appeal against the decree of possession of the suit property, regarding which, there is concurrent findings of both the Courts below.

9. Ld. counsel has pressed for only one point. It is contended that suit was filed in September 2006 and therefore, mesne profit could not be granted since May 1983. It is contended that at the most the Court could have ordered payment of the mesne profit for the period since three years prior to the filing of the suit.

10. There is merit in the aforesaid contention. It has been found by the Id. Appellate Court that lease amount was not paid by the defendant or his father after April 1983. It was further found that defendant allegedly paid an amount of ₹17,600/- from 1983 to 2004 i.e. @ ₹800 per month vide demand draft dated 19.04.2004, but the said amount was returned by the defendant vide demand draft dated 14.01.2005 along with a letter dated 14.01.2005 (Ex.PZ) as was also admitted by the defendant in his cross examination. By way of this letter, plaintiff-Government of Jammu and Kashmir categorically denied the defendant as its tenant/lessee or licensee. It stood established that after April 1983, no lease money had been paid to the defendant.

11. However, suit has been filed in September 2006. There is nothing on record that plaintiff-Government of Jammu and Kashmir ever claimed the lease amount prior to filing of the suit.

12. In the above circumstances, mesne profit could have been claimed by the plaintiff at the most for the period since three years prior to the filing of

the suit and not prior to that period. As such, the judgment of the First Appellate Court is modified to the extent that plaintiff-respondent will be entitled to the arrears of mesne profit for the period since three years prior to the institution of suit @ ₹10,000/- per annum till the filing of the present suit i.e. 20.09.2006 and thereafter, @ ₹18000/- per annum from the date of filing of the suit till actual vacant possession of the suit property is handed over by the defendant to the plaintiff.

13. As such, appeal against concurrent findings of courts below for decree for possession of suit property is dismissed; whereas order of appellate court qua grant of mesne profits is modified to the extent as indicated above. Both appeals stand disposed of accordingly

Pending application (s), if any, stands disposed of.

A photocopy of this order be placed on the file of connected case.

28.02.2025
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No