(1985) 09 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 176 of 1974

Dr. Nazar Singh		APPELLANT
	Vs	
Miss Promila Chand		RESPONDENT

Date of Decision: Sept. 23, 1985

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 2(12)

Citation: (1985) 09 P&H CK 0019

Hon'ble Judges: S.P. Goyal, J; G.C. Mital, J

Bench: Division Bench

Advocate: K.P. Bhandari and Mr. Ravi Kapur, for the Appellant; J.L. Gupta and Mr. Rajiv Atma Ram, for the Respondent

Judgement

S.P. Goyal, J.

This judgment will dispose of R.F.A. No. 176 of 1974 and the cross appeal, R.F.A. No. 188 of 1974 which have arisen out of a suit filed by Dr. Nazar Singh for mesne profits for wrongful use and occupation of the house after termination of the tenancy. The damages were claimed at the rate of double the agreed rent of Rs. 275/- per month which were allowed by the trial Court relying on two decisions, one of the Lahore High Court in AIR 1928 554 (Lahore) , and the other of this Court in R.S.A. No. 1371 of 1969 (Atma Ram v. Smt. Jai Rani Kapur R.S.A. No. 1371 of 1969) decided on September 23, 1969. However, the claim of the Plaintiff qua drawing room of the house after February 11, 1969 was turned down which led to the filing of R.F.A. No. 176 by him. The Defendant filed a cross appeal to challenge the quantum of the damages allowed. When this case came up for hearing before me, sitting singly, it was pointed out that there was a direct conflict in my earlier decision in Harbilas v. Roshan Lal (1982) 84 P.L.R. 384, and the decision in Atma Ram''s case (supra). So I referred the following question to a larger Bench:

Whether the landlord is entitled to recover damages for mesne profits after the termination of the tenancy at the rate of double the agreed rent.

2. A careful perusal of the judgment in Atma Ram''s case (supra), however, would show that the learned Judge never laid down therein an abstract principle of law that after the termination of the tenancy the landlord would be entitled to charge mesne profits or damages for wrongful occupation at the rate of double the agreed rent. After quoting the following passage from a Division Bench decision of the Lahore High Court in Mul Raj''s case (supra) the learned Judge observed that there was no error of law in the finding of the court below to justify interference in second appeal and dismissed the same:

In considering what sum should be allowed for use and occupation, or for damages for contumacious holding over, the whole circumstances of the tenancy and the sufficiency in point of time of the notice may properly be taken into consideration. Double the rent may sometimes be taken taken as a fitting standard.

The passage quoted from Mnl Raj''s case (supra) also does not show that the Division Bench ever laid down any principle of law that double the rent would invariably be the proper damages for wrongful occupation of the property after termination of the tenancy. The learned Counsel for the Appellant also relied on a Single Bench decision of the Lahore High Court in Rure Khan v. Ghulam Muhammad A. I. R. 1924 Lah. 643 and the two Division Bench decisions in AIR 1932 275 (Lahore) and AIR 1933 61 (Lahore) Apart from the decision in Rure Khan''s case (supra) no other decision has laid down any absolute rule regarding the quantum of damages.

3. In Narain Das''s case (supra) the learned Judges observed:

that it was a matter of discretion resting with the Court to decide whether a tenant contumaciously holding over should be penalized to the extent of making him pay double the rent or some lesser amount. In the present case the learned Additional District Judge had come to the conclusion that the circumstances were such that the situation would be met by an enhancement of Rs. 20/- per month. We are not prepared to differ with this view and regard it as against law.

Originally, the rent was Rs. 130/- per month and the damages were allowed at the rate of Rs. 150/- per month only and not double the agreed rent.

4. In Sardar Singh''s case (supra), the Bench observed: "the rule according to which double the rent is taken as suitable measure of damages in such cases is taken from English law. The matter is, no doubt, regulated by Statute in England but the rule has been held to be taken to be ordinarily a suitable guide in such cases in this Province. The rule is, of course, not inflexible and less or more may be awarded by way of damages according to the circumstances: Of AIR 1932 275 (Lahore) , if there is evidence to justify such a course." None of the two decisions thus has laid down any absolute rule of law that the damages for wrongful use and occupation have to be awarded at double the rent Instead the view consistently has been that it is for the court to assess reasonable damages to be awarded for the contumacious holding over of the property by the tenant

after the termination of the tenancy.

5. The liability of a tresspasser or a person in wrongful possession of the propety is to pay mesne profits of the lawful owner. The mesne profits are defined in Section 2(12) of the CPC as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits due to improvements made by the person in wrongful possession. The Privy Council in AIR 1930 82 (Privy Council) held:

The test set by the statutory definition of mesne profit is clearly not what a person has lost by his exclusion but what the trespasser has or might reasonably have made by his wrongful possession. What the person in such a case might or would have made can only be relevant as evidence of what the trespasser might with reasonable diligence have received.

The statutory provision regarding mesne profits, as interpreted by the Privy Council, was completely missed and not noticed in either of the decisions noticed above. The matter was considered at great length by a Division Bench of the Delhi High Court in Hindustan Steel (Pvt.) Ltd. v. Smt. Usha Rani Gupta A. I. R. 1969 Del 59 and H.R. Khanna, J., (as he then was) speaking for the Bench in precise and succinct manner formulated the principles on the question for wrongful occupation in the following terms:

The problem has, therefore, to be approached from the Defendant''s end. What has to be seen is what profits, if any, the Defendant who is in wrongful possession of the property has actually received or might with ordinary diligence have received therefrom. There can be no doubt that in the case of the property of which rent is controlled by the Rent Control Act the Plaintiff cannot complain of having suffered any loss by his exclusion, beyond the rent for which the property is let out by him to the tenant holding over, except to the extent of any permissible increase of rent under the Rent Control Act itself, but the only bearing which the evidence as to what the Plaintiff in such a case might or would have made, on the question of mesne profits, is that it is relevant for the purpose of showing what the Defendant might with reasonable diligence have received. How and. in what way can any element of penatty on account of the Defendant who is found to have been contumaciously holding over enter into calculation of mesne profits, who are wholly unable to see.

6. Respectfully agreeing with the same, we dissent from the view expressed in certain decisions of the Lahore High Court that double the rent would furnish a suitable measure of mesne profits which are based on the provisions of English statute and had been rendered without noticing the definition of the mesne profits as contained in Section 2(12) of the Code of Civil Procedure. We further hold that damages have to be determined on the evidence led by the parties and would only be those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have recieved therefrom together with interest on such profits. Further that what the

Plaintiff has lost by his exclusion would also be not relevant except when this fact may be relevant as evidence of what the Defendant might with reasonable diligence were received. The question referred to us is answered accordingly. The case would now go back to the learned Single Judge to decide the case on merits in the light of the observations made above.

Sd/- G.C. Mital, J.