

Naranjan Singh Vs Kartar Singh and Others

Civil Revision No. 363 of 1992

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 7, 2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 20 Rule 12, Order 6 Rule 2, Order 7 Rule 2#Court Fees Act, 1870 " Section 11, 7, 7(1)

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: Sanjay Vij, for the Appellant; R.K. Battas and A.M. Punchhi, for the Respondent

Final Decision: Dismissed

Judgement

V.K. Jhanji, J.

Short question involved in this civil revision is as to what amount of court fee is leviable on the memorandum of plaint.

2. Plaintiff filed suit for declaration, possession and damages/mesne profits. In regard to the claim of mesne profits, he stated value for the purpose

of court fee as Rs. 200/- and paid the court fee thereon. Defendant filed an application for issuance of a direction to the plaintiff to affix proper

court fee on the memo or plaint. Upon contest, trial Court directed the plaintiff to determine the value of mesne profits for the last three years

preceding the institution of the suit and pay court fee accordingly. Hence this civil revision.

3. It is contended by the learned counsel for the petitioner that the court fee paid by the plaintiff on the memorandum of plaint was correct because

mesne profits were uncertain and, therefore, could not be assessed for the last three years preceding the filing of the suit. He further stated that in

such suits plaintiff is always at liberty to state his own value and pay court fee thereon. In this regard, he placed reliance on Commercial Aviation

and Travel Company and Others Vs. Vimla Pannalal, .

4. On the other hand, learned counsel for the defendant stated that in view of Order VI Rule 2 of the Code of Civil Procedure, plaintiff has to

assess approximate amount of mesne profits which he put in his claim and pay court fee thereon. In this regard, he placed reliance on

Gopalakrishna Pillai and Others Vs. Meenakshi Ayal and Others, .

5. After hearing the learned counsel for the parties and on going through the record, I am of the view that the order of trial Court does not call for

any interference.

6. Suit for mesne profits are governed by Order VII Rule 2 of the CPC and the Court is empowered to pass a decree for mesne profits under

Order XX Rule 12 of the Code of Civil Procedure.

7. A claim of mesne profits is in essence a claim for damages or compensation. There is a substantial difference between mesne profits,

antecedents to the suit which may be always approximately valued as they have already accrued due during a definite period and mesne profits

subsequent to the suit which at the date of plaint must be treated as uncertainable because it depends upon an uncertain element, namely, the

period of time which would intervene between the date of the institution of the suit and the date of recovery of possession under the decree. The

first category is governed by clause (i) of Section 7 of Court Fee Act and ad-valorem court fee is payable thereon whereas second category is

governed by Section 11 of the Court Fee Act. For past mesne profits i.e. upto the date of filing of the suit, one can assess his claim by affixing a

notional damages he has suffered, on the basis of rent etc. which the property adjoining the property in dispute is fetching whereas for future, it is

difficult to assess the same.

8. This issue came up for consideration before Hon"ble Apex Court in Gopalakrishna Pillai and Others Vs. Meenakshi Ayal and Others, wherein it

has authoritatively laid down as under:-

With regard to past mesne profits, a plaintiff has an existing cause of action on the date of the institution of the suit. In view of Order 7 Rules 1 and

2 and Order 7 Rule 7 of the CPC and Section 7(1) of the Court Fee Act, the plaintiff must plead this cause of action, specifically claim a decree

for the past mesne profits, value the claim approximately and pay court fee thereon. With regard to future mesne profits, the plaintiff has no cause

of action on the date of institution of the suit and it is not possible for him to plead this cause of action or to value it or to pay court fee thereon at

the time of institution of the suit. Moreover, he can obtain relief in respect of this future cause of action only in a suit to which the provisions of

Order XX Rule 12 apply. But in a suit to which the provisions of Order XX rule 12 apply, the Court has a discretionary power to pass a decree

directing an enquiry into the future mesne profits and the Court may grant this general relief though it is not specifically asked for in plaint, xxxxx

9. In view of the aforesaid law laid down by Apex Court, plaintiff is required to claim past mesne profits by valuing the claim approximately and

pay court fee thereon. So far as future mesne profits are concerned, a fixed court fee as provided u/s 11 of the Court Fee Act shall be payable.

10. Case law laid down in case Commercial Aviation and Travel Company & Ors. (supra) and relied upon by learned counsel for the plaintiff has

no applicability to the facts of the present case because in that case dispute was with regard to a partnership concern and rendition of accounts. In

such cases no body is certain whether in a particular period firm was running into profits or losses. So, no approximate value for the purpose of

court fee can be fixed.

11. Accordingly, this civil revision is dismissed with no order as to costs. However, plaintiff is granted two months time from the date of

appearance before the trial Court to state the approximate value for the purpose of court fee for the past mesne profits and pay proper court fee

thereon.

Parties are directed to appear before the trial Court on 11.12.2001.