



IN THE HIGH COURT OF DELHI AT NEW DELHI

FAQ (OS) No. 226 of 2000.

DATE OF DECISION: 20.11.2000.

IN THE MATTER OF:

M/s.Living Media (India)
Limited

.... Appellant
Through Mr.Sushil Salwan
Advocate

Versus

Vivek Gupta and
another

.... Respondents
Through Mr.R.P.Bansal,
Sr.Advocate with Mr.Baldev
Atreya, Advocate

Coram:-

The Hon'ble Mr.Justice Arun Kumar
The Hon'ble Mr.Justice A.K.Sikri

1. Whether Reporters of local papers may be allowed to see the Judgment? ✓
2. To be referred to the Reporter or not? ✓

ARUN KUMAR,J. (Oral)

This appeal is directed against order dated 25th May, 2000 passed by learned Single Judge allowing amendment of the plaint. The plaintiffs-respondents had filed a Suit for possession and recovery of mesne profits on account of use and occupation of the Suit premises on 17th March, 1993. In the prayer clause contained in the plaint mesne profits at given rates for use and occupation of the Suit premises were claimed upto the date of filing of the Suit. There is no formal prayer in the plaint as originally filed for direction to the defendant to pay or deposit use and

sk



- 2 -

FAO(05):226/2000

occupation charges/mesne profits with effect from date of institution of the Suit till delivery of possession. However, alongwith the Suit the plaintiffs filed an application under Order XXXIX Rule 10 of the Code of Civil Procedure (being IA. No.3326/93) in which a prayer was made that during the pendency of the Suit, the defendants be directed to pay or deposit use and occupation charges/mesne profits month by month from the date of filing of the Suit. Subsequently, the plaintiffs applied for amendment of the plaint so as to incorporate the relief of payment on account of mesne profits from the date of institution of the Suit till delivery of possession. The amendment of the plaint was allowed by the learned Single Judge by the impugned order.

Learned counsel for the appellant has argued that part of the claim which has been allowed by way of amendment had become time barred and therefore amendment with respect to time barred claim could not have been allowed. Learned counsel submits that the amendment application was filed on 2nd August, 1998 and by way of amendment, according to learned counsel for the appellant, the plaintiffs-respondents could claim at best mesne



profits with effect from a date, three years backwards because beyond the period of three years the claim would be barred by time. In support of his contention, learned counsel relied on the judgment in the case of Haridas Girdharidas and others versus Varadaraja Pillai and another reported in AIR 1971 SC 2366. In our view, reliance on this judgment by learned counsel for the appellant is misplaced because the relevant part of the judgment is based on concession and the Court really did not go into the question as to whether amendment could have been allowed or not on the ground that the claim was partly time barred.

In our view the provisions contained in Order XX Rule 12 of the Code of Civil Procedure leave no scope for the contention raised by the learned counsel for the appellant. Relevant portion of Rule 12 provides as under:-

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) x x x

(b) x x x

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



- 4 -

FAO(05):226/2000

(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.

In view of the aforesaid provision the Court can direct inquiry about mesne profits payable to the plaintiff by the defendant from the date of institution of the Suit till delivery of possession etc. The plaintiff's suit was in fact a Suit for possession and mesne profits, although mesne profits were claimed upto the date immediately before filing of the Suit. Thus provision of Rule 12 of Order XX of the Code of Civil Procedure would become applicable. According to which Court can order inquiry in this behalf from which will follow a decree for mesne profits for the period from the date of institution of the Suit till delivery of possession. In fact clause (c) of sub-rule (1) of Rule 12 reproduced above clinches the issue. It specifically stipulates the period for which inquiry as to rent or mesne profits can be made by the Court and decree passed in terms thereof. The period starts from

22



the date of institution of the Suit and goes upto one of the eventualities mentioned in sub-clause (i), (ii) and (iii) of the Code of Civil Procedure of Rule 12 (1)(c) which are delivery of possession to the decree holder or relinquishment of possession by the judgment debtor with notice to the decree holder through the Court or the expiration of three years from the date of the decree, which ever event first occurs. None of the events has occurred so far in this case as suit for possession is pending and neither possession is delivered nor any decree is passed. There was no question of there being any period, for which mesne profits are claimed, being barred by limitation. (Ref.: Lucky Kochuvareed versus P. Mariappa Gounder and others reported in AIR 1979 SC 1214). Therefore, the order of the learned Single Judge allowing the amendment of the plaint in this behalf cannot be faulted. Infact in view of the provisions of Order XX Rule 12 of the Code, limitation would apply only in respect of the mesne profits claimed before the date of filing of the Suit and in so far as mesne profits from the date of the institution of the Suit are concerned, this Rule obligates Court to hold inquiry into the mesne profits and therefore even in the absence of

de



formal prayer to this effect, mesne profits can be awarded by the Court. This is so held by the Apex Court in the case of R.S. Madanappa (decd.) through his legal representatives versus Chandramma and another reported in AIR 1965 SC 1812 as well as in the case of GopalKrishna Pillai and others versus Meenakshi Ayal and others reported in AIR 1967 SC 155.

After all the only objection of the appellant, to the amendment allowed by the learned Single Judge, is based upon limitation. According to him, period of limitation is three years and, therefore, plaintiff could claim mesne profits for a period of three years backward, from the date of application for amendment. However, what is being missed is the starting point of limitation which is the date when right to apply accrues. As per the provisions of Order XX Rule 12 (1)(c) of the Code of Civil Procedure, right to apply for mesne profits would accrue from the date of delivery of possession or from the date of decree. Therefore, entire basis on which the appellant has founded his argument, is misconceived. (Ref.: Jainalabuddin, Ilayangudi Nesavupattarai Pallivasal through its Trustees themselves and as representatives

file



of Janattars versus K.S.A. Abdul Kader and others reported in 1979 (1) Rent Law Reporter 387).

The matter can be looked into from yet another angle. The amendment is based on the original claim for mesne profits. Therefore, cause of action is not changed by amendment thereby claiming the mesne profits specifically for the period from the date of filing the Suit till recovery of possession. Such an amendment cannot be treated as time barred. The learned Single Judge rightly placed reliance on A.K.Gupta and Sons Ltd. versus Daxodar Valley Corporation reported in AIR 1967 SC 96. Reference in this connection may also be made to the case of Vineet Kumar versus Mangal Sain Wadhera reported in (1984) 3 SCC 352 wherein it has been observed :-

"Normally amendment in plaint is not allowed if it changes the cause of action. However, where the amendment does not constitute an addition of a new cause of action, or raise a new case, but amounts to no more than adding to the facts already on the record, the amendment would be allowed even after the statutory period of limitation. Processual justice requires that the events and developments subsequent to the institution of proceedings must be taken



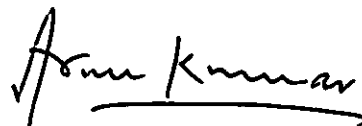
- 8 -

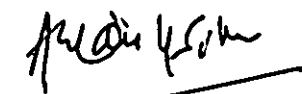
FAO(05):226/2000

into consideration in appropriate cases to promote substantial justice."

Moreover, in the present case we find that right from the beginning i.e. alongwith the plaint, the plaintiffs had filed an application seeking direction of the Court that the defendants should start paying amounts towards mesne profits from the date of institution of the Suit onwards. This shows the intention of the plaintiffs and also clarifies the fact that the plaintiffs were seeking direction regarding payment of amount towards mesne profits right from the date of institution of the Suit. Accordingly, we find no merit in this appeal and the same is dismissed.

No costs..


(ARUN KUMAR)
JUDGE


(A.K. SIKRI)
JUDGE

November 20, 2000.
pd