

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

I.A.No. 4 of 2014

IN

SPECIAL LEAVE PETITION (C) No.13915/2008)

Sant Ram

.....Applicant/
Petitioner(s)

VERSUS

Dhan Kaur & Ors.

.....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This is an application filed by the applicant-petitioner-in-person under Order XVIII Rule 5 of the Supreme Court Rules, 1966 (for short 'the Rules') for appeal against the order dated 13.02.2014 of the Registrar(J-II) refusing to register the application (I.A.No.D.123226) for clarification/interpretation of this Court's order dated 21.04.2009 passed in

SLP(c) No.13915 of 2008.

2) This application was listed for appropriate orders on 01.07.2014. This Court directed issuance of notice to the respondents. They were served and duly represented through counsel.

3) On 09.10.2015, this Court requested Mr. D.N. Goburdhun, Advocate, who was present in Court, to assist the petitioner-in-person.

4) We heard Mr. D.N. Goburdhan, learned counsel for the applicant/petitioner and Mr. D.K. Thakur and Mr. Uma Datta learned counsel for the respondents.

5) In order to appreciate the issue involved in this application, it is necessary to set out the relevant facts in brief infra.

6) On 29.08.1966, Smt. Satyawati-the predecessor-in-interest and wife of the applicant herein, purchased a plot admeasuring 96 sq. yds. contained in Khasra No. 526/508/340 situated at

Mauza Shahdhawa, Sarai Rohilla, New Delhi for a consideration of Rs.4000/- through a registered sale deed from one Shri Nakul Dev. The said vendor had also assigned on 14.10.1966 the right to recover damages because it was noticed that the predecessor-in-interest of the respondents herein had encroached a portion of the said land and had also illegally constructed a room thereon.

7) On 20.10.1966, the applicant's wife instituted a suit being Suit No. 278 of 1966 in the Court of sub-Judge, Ist class, Delhi against the predecessor-in-interest of the respondents herein for possession of an area measuring 14'x9' and damages for the period 29.08.1964 to 28.08.1966 @ Rs.200/- p.m.

8) By judgment/decreed dated 10.11.1967, the Trial Court dismissed the said suit.

9) Being aggrieved by the said judgment/decreed, the wife of the applicant filed an appeal before the Additional District Judge, Delhi. The Additional

District Judge, by order dated 07.06.1972, allowed the appeal and decreed the suit of the applicant for recovery of possession of the land and an amount of Rs.500/- towards the claim of mesne profits.

10) Questioning the said order, the respondents filed second appeal being RSA No. 78 of 1972 before the High Court of Delhi. The learned Single Judge of the High Court, by judgment dated 26.05.1975, allowed the same and set aside the judgments and decrees of both the courts below and remanded the matter to the Trial Court for determination in the light of the observations made in the judgment.

11) After remand, the Trial Court, by its judgment and decree dated 20.10.1981, again decreed the suit in favour of the applicant for recovery of vacant possession of the disputed land and awarded damages/mesne profits @ Rs.100/- p.m. from the date of filing of the suit till realization/recovery with costs.

12) The respondent, felt aggrieved, filed an appeal being Appeal No. 135 of 1981. The Additional District Judge, by judgment and decree dated 13.12.1984, allowed the same and dismissed the suit of the applicant herein.

13) Being aggrieved, the applicant filed an appeal being R.S.A. No. 41 of 1985 before the High Court. By order dated 03.02.1988, the learned Single Judge of the High Court allowed the same and decreed the suit and granted one month's time to the respondents to remove the room or any other encroachment on the suit land. A decree for Rs.500/- was also passed along with interest @ 6% p.a. from the date of institution of the suit up to realization and further directed to make an enquiry under Order XX Rule 12 of C.P.C. regarding determination of mesne profits from the date of institution of the suit till delivery of possession.

14) In pursuance of the order dated 03.02.1988

passed by the High Court, the question of determination of the mesne profits came up before the Court of Civil Judge. The Civil Judge, Delhi by order dated 24.02.2001 in Suit No. M-136/1996 fixed mesne profits as Rs.200/- p.m. from 20.10.1966 and the damages were enhanced 25% of the existing rate w.e.f. 20.10.1966 after every three years. The mesne profits were decreed up to 21.08.1990.

15) Against the said order, the respondents filed an appeal being R.C.A. No.9 of 2001 before the A.D.J. Delhi. By order dated 04.01.2003, the appellate Court disposed of the appeal and directed the appellants therein (respondents herein) to pay mesne profits to the applicant herein @ Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month. It was also held that the Trial Court

committed an error in determining mesne profits for the entire land whereas the disputed land was a piece of land measuring 14'x9' only and not the entire land.

16) Being aggrieved, the applicant filed a petition under Article 227 of the Constitution being Civil Misc.(M) No. 135 of 2003 before the High Court of Delhi. The learned Single Judge of the High Court, by order dated 21.11.2005, dismissed the same.

17) Challenging the said order, the applicant filed S.L.P.(c) No. 6927 of 2006 before this Court. By order dated 05.02.2007, this Court dismissed the same.

18) Thereafter, the applicant filed a review petition being R.A. No. 340 of 2007 for review of order dated 21.11.2005 before the High Court. By order dated 03.01.2008, the learned Single Judge of the High Court dismissed the same.

19) Dissatisfied with the said order, the applicant

had filed this S.L.P., namely, S.L.P.(c) No. 13915 of 2008 before this Court. During the pendency of the petition before this Court, possession was handed over to the applicant in 2009.

20) On 21.04.2009, when the special leave petition was being heard, the amicus curiae appearing on behalf of the applicant submitted to the Court that the applicant does not want to press the prayer for mesne profits. Therefore, on that statement, this Court passed an order dated 21.04.2009 recording that statement and accordingly closed the matter.

21) Thereafter, the applicant filed an application being I.A. No. 3 of 2009 before this Court for recalling the order dated 21.04.2009 passed in the SLP. However, the said application was dismissed by this Court on 26.04.2010.

22) After the order passed by this Court, the applicant filed an application being M-39/12 under Section 151 of the Civil Procedure Code, 1908

before the Civil Judge for complying with its order dated 24.02.2001 in Suit No. M-136 of 1996 and to execute the said order of mesne profits as confirmed by the High Court @ Rs.30 p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing month after month. In that application, the respondents raised an objection by showing the order dated 21.04.2009 passed by this Court recording therein that the applicant herein had given up his claim of mesne profits. On that basis, the Execution Petition was dismissed.

23) Against the said order, the applicant filed Civil Revision No. 118 of 2013 before the High Court. On the basis of the statement made by the applicant before this Court, the civil revision was dismissed by the High Court on 26.08.2013.

24) Instead of challenging the said order, further the applicant filed an application before this Court

being I.A. D.No.123226 for clarification/interpretation of this Court order dated 21.04.2009 stating therein *inter alia* that on the date when the matter was listed, due to non-communication between him and the amicus curiae, he could not give any instruction regarding the mesne profits to amicus curiae and the statement given by the amicus curiae was on his own and lastly, what was at best given up by the applicant was his right to recover mesne profits at the rate of Rs.170/- which were not awarded to him and for which the petition was filed and not what was already awarded to him by the Courts below i.e. mesne profits at the rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month.

25) On 13.02.2014, the said application was listed before the Registrar (J-II) for registration. However,

the same was not allowed to be registered.

26) With this background facts, the applicant filed this application against the order dated 13.02.2014 of the Registrar (J-II) under Order XVIII Rule 5 of the Rules which was registered as I.A. No.4.

27) Mr. D.N. Goburdhan, learned Counsel for the applicant, has urged only one contention. According to him, the Executing Court and the High Court were not justified in dismissing the applicant's execution application on the ground that the applicant having given up his right to recover the mesne profits in terms of order dated 21.04.2009 of this Court had no right to recover mesne profits at all from the respondents. Learned counsel pointed out that the applicant had originally claimed mesne profits at the rate of Rs.200/- p.m. whereas the Courts below awarded only at the rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with

interest @ 12% at the amount accruing due month after month and, therefore, the applicant was pursuing his claim for the balance, i.e., Rs.170/- p.m. in the petition in this Court, which he gave up in the order dated 21.04.2009. Learned counsel submitted that the claim therefore which was given up in this Court was the claim in relation to mesne profits for the balance amount, i.e., Rs.170/- p.m. which was not awarded by the Courts below. Learned counsel submitted that there was therefore no justification on the part of the courts below to dismiss the applicant's execution application to recover mesne profits already awarded by the courts below at the rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month from the respondents by placing reliance on order dated 21.04.2009. Learned counsel, therefore, prayed

that this Court may clarify the order dated 21.04.2009 to this extent so as to enable the applicant to recover the mesne profits at the rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month from the respondents.

28) Learned counsel for the respondents supported the order made in the execution application and prayed for dismissal of the application under consideration.

29) Having heard learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the application under consideration.

30) The order dated 21.04.2009 passed by this Court, which was made basis by the two courts below, for dismissal of the applicant's execution

application reads as under:

“The learned senior counsel appearing on behalf of the petitioner informed that in pursuance of the order dated 03.02.2009 passed by this Court for execution of the decree obtained by the petitioner, with police help the petitioner has obtained the possession of the property.

Learned senior counsel further submitted that there was considerable difficulty in obtaining the possession of the property and the petitioner had to ultimately obtain possession by demolishing the wall that had been put up by the respondent in a portion of the Galli (Lane) which was situated to the West of the property belonging to the petitioner.

Learned counsel for the respondent stated that though the property of the respondent was situated to the South of petitioner’s property, the respondent was also in occupation of a triangular portion of the land to the West of the petitioner’s property. Learned Senior Counsel appearing for the petitioner pointed out that it could not be the position, as the western boundary of the petitioner’s property is clearly shown as a Galli and not defendant’s property.

In view of the delivery of possession and clearance on the western side, the petitioner will report full satisfaction of the decree before the Executing Court.

The learned counsel for the petitioner states that the petitioner does not want to press the prayer for mesne profits. Therefore, this special leave petition is closed as no longer surviving for consideration.”

(emphasis supplied)

31) As rightly urged by the learned counsel for the applicant, the question before this Court was

whether the applicant was entitled to claim mesne profits at the rate of Rs.200/- p.m. Since the applicant was already awarded mesne profits at the rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month, which was not under challenge at the instance of respondents and hence the question was whether the applicant was entitled to claim mesne profits for the balance amount, i.e. Rs.170/- p.m. from the respondents.

32) It is this claim, i.e., Rs. 170/- p.m., which was given up by the applicant that being the subject matter of the petition which this Court recorded and accordingly disposed of the applicant's petition by order dated 21.04.2009.

33) In our opinion, the order of this Court dated 21.04.2004 could not have been construed so as to deprive the applicant to claim mesne profits at the

rate of Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month from the respondent. Indeed, this claim which was already adjudicated in applicant's favour by the Courts below and which was neither challenged by the respondents and nor was it the subject matter of dispute in applicant's petition, the same could not be held to have been given up by the applicant by order dated 21.04.2009.

34) It is a settled principle of law that only those issues could be given up by the party which are the subject matter of the lis before the Court. Since in the petition before this Court, the issue with regard to award of mesne profits at the rate of 30/- p.m. was not the subject matter at the instance of any party to the lis, the question of its giving up at the instance of the applicant did not arise. The order

dated 21.04.2009, in our view, has to be interpreted keeping in view these background facts.

35) In the light of foregoing discussion, it is hereby clarified that the applicant's right to claim mesne profits Rs.30/- p.m. with 10% increase every three years from the date of filing of suit till 21.08.1990 together with interest @ 12% at the amount accruing due month after month from the respondents, which has already been determined and awarded to the applicant and which was not the subject matter of the petition in this Court would remain intact for recovery from the respondents and is not affected in any manner by order dated 21.04.2009. In other words, it was not given up.

36) I.A. No. 4 thus stands allowed. The order dated 21.04.2009 passed by this Court is accordingly clarified.

37) The Executing Court is, therefore, directed to

take up the applicant's execution application and decide the same in accordance with law in the light of clarification made hereinabove of the order dated 21.04.2009.

38) Before parting, we place on record our appreciation to Mr. D.N. Goburdhan, Advocate, who, on our request, assisted the applicant.

.....J.
[J. CHELAMESWAR]

.....J.
[ABHAY MANOHAR SAPRE]

New Delhi;
October 16, 2015.

JUDGMENT