

Present: Sandeep Mishra
 In the court of District Judge-I, Katihar
 Title Appeal No. 05 of 2010
 (CIS 42 of 2014)
 (Arising out of Title Suit No. 14 of 1996) Indian Oil

Corporation and
 another

...Appellants

versus

Gayatri Devi and others

... Respondents.

Title Appeal No. 05/2010

BRKT010000092010



Date of filing:- 17.05.2010
 Date of registration:- 17.05.2010
 Date of Disposal:- 17.06.2026
 Duration of disposal:- 16 years 01
 month

In the court of District Judge-I, Katihar

Title Appeal No.05 of 2010

1. Indian Oil Corporation Ltd. Head Office, G-9, Ali Yavar Jung Marg, Bandara (East),
 Mumbai- 400051 (India).

2. The Assistant Manager (Sales) Indian Oil Corporation Ltd. Navaratan Hata, Behind
 the Civil S.D.O. Residence, Purnea- 854301 at present residing at Katihar, District-
 Katihar.

... Appellants

Versus

1. Gayatri Devi, wife of Sudhir Kumar Gupta, resident of village Bhawanipur, P.S.-
 Gopalpur, District- Bhagalpur.

2. Upendra Kumar Singh, son of Doman Singh, village- Baniya, P.S.- Gopalpur,
 District- Bhagalpur, at present village- Islampur, Barsoi, P.S. and P.O.- Barsoi, District-
 Katihar.

3. Banwari Singh, son of Parmeshwar Prasad Singh, village- Baniya, P.O. and P.S.-
 Gopalpur, District- Bhagalpur, at present Sri Banwari Singh, Asst. Engineer, Canal
 Design, Irrigation Department, Division no. 3, 5th Floor, Biscoman Tower, Patna.

4. The Chairman, Indian Oil Corporation Ltd. Head Office, G-9, Ali Yavar Jung Marg,
 Bandara (East) , Mumbai- 400051 (India).

5. The Deputy Manager, Indian Oil Corporation Ltd. Eastern Regional Office-2 Garihat
 Road (South), Dhakuria, Calcutta-700086.

6. The Chief Divisional Manager, Indian Oil Corporation Ltd. Market Divisional
 Office, Mourya Lok Complex, Dak Bungalow Road, Patna-1

... Respondents.

Dated, Katihar, the 17th day of June , 2026

Present: Sandeep Mishra

District Judge-I

For the appellants:

(1) Shri Sharad Kant Verma, Advocate

(2) Shri Rajesh Kumar, Advocate.

For respondent no.-1

(1) Shri Sanjay Kumar Jha, Advocate

(2) Shri A.N. Sen Gupta, Advocate

For respondent no.-2

(1) Shri Rakesh Ranjan, Advocate

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JUDGMENT

1. This Title Appeal has been filed by the appellants- defendants namely Indian Oil Corporation against the order and decree dated 26.06.2009 passed by the learned Sub-Judge-I, Katihar in Title Suit No.14 of 1996 awarding mense profit in favour of the plaintiff-respondent no.1 for the period 10.02.1996 to 15.01.2004 amounting Rs.5,71,000/- as mense profit with interest of 9% per annum till the date of payment.

2. Case of plaintiff-respondent no.1 as set out in the plaint is that the suit land of Mouza Sultanpur, Thana No.132, Tauzi No.52, Anchal and Thana Barsoi bearing chak khata no. 192, chak Khesra No.2010, area 0.23 acres bearing new khata no.137, new khesra no.2089 area 23 acre was purchased by the plaintiff by registered sale deed dated 17.04.1995. After purchase, the plaintiff-respdent no.1 came in possession of the aforesaid land and the said land has been mutated in the name of the plaintiff-respondent no.1. The said land is bounded by road in the north, by part of the land of aforesaid Khesra in the South, East and West. Defendant no.7 namely Banwari Singh was acquainted with the plaintiff-respondent no.1 who got licence from the appellant Indian Oil Company for opening Petrol Pump. Said defenedant no.7 told the plaintiff-respondent no.1 that if she would give land, he can start petrol pump and he promised to give share in the profit. Taking into confidence, he also obtained signature of the plaintiff-respondent no.1 on some blank papers. However, said defendenat no.7 namely Banwari Singh got government job on account of which, the Indian Oil Corporation gave licence for opening the petrol pump to some other person. Thereafter, the plaintiff-respondent no.1 and her husband asked the Company as well as the new licence holder not to do any work on the said land but they did not listen and continued their illegal work. The plaintiff also submitted written application in the police station but no action was taken. Hence, the plaintiff-respondent no.1 filed the suit. Further case of the plaintiff-respondent no.1 is that the plaintiff-respondent no.1 has never executed any agreement in favour of the company and if

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any such document is found in existence, the same is forged and fabricated. Further, in course of illegal possession of the respondents on the suit land, initially, the rent of the said land was 0.50 paise per square feet per month which has been enhanced to rupees 1.50 paise. During the pendency of the suit, by the order dated 09.10.2001 relief no.(d) was ordered to be added in the plaint by which damage at the rate of Rs.200/- per day and a decree of mense profit was claimed by the plaintiff.

3. Defendant no.1, 5 and 5/A appeared in the suit and filed their written statement. Case of defendants is that the suit is not maintainable and the plaintiff has got no valid cause of action to file this suit. The suit is barred by limitation. An advertisement was advertised by I.O.C.L. in Hindi newspaper "Hindustan" on 19.05.1995 for vacant land for establishing retail outlet. The plaintiff offered the land on annual rent of rupees five thousand. The plaintiff in response to that advertisement offered to give land in question to defendant no.1 appellant for the purpose of establishment of petrol pump. After negotiation, annual rent of the land in question was fixed at Rs.5000/- for a period of ten years and, thereafter increase of rent @ 15% at every ten years. The period of lease was initially fixed for 30 years. The plaintiff herself visited the Divisional Office of defendant no.1-appellant and she herself finalized the rent and gave in writing about the terms and conditions and also her offer to give possession on 18.07.1995. The plaintiff, out of her free will handed over possession of the land in question to defendant no.1-appellant through defendant no.5 and duly signed the handing over possession certificate with effect from 21.08.1995. The plaintiff herself, with her husband, visited the office of defendant no.4 and finalised the terms and conditions of the lease and she agreed to execute lease deed accordingly but even on repeated requests, she failed to execute the required lease deed probably at the instigation and in collusion of defendant no.7 whose dealership offer was withdrawn when the fact about his being in service was made known to the defendants-appellant. Annual rent was not fixed at Rs.15000/-. The defendants-

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appellants are always ready to pay the agreed amount as per agreement for the period of possession of the suit land.

4. The plaintiff- respondent no.1 filed Title Suit No.14 of 1996 which was decreed by the judgement dated 13.08.2003 in favour of plaintiff-respondent no.1 directing reinstatement of land within a period of three months. On 25.09.2003, the suit land was vacated by the appellant Indian Oil Corporation. Respondent no.1 namely Gayatri Devi filed an appeal bearing Appeal case No.10 of 2003 against the judgement and decree dated 13.08.2003. On 04.02.2008, the appellate court remanded the matter to the trial court with a direction to give fresh decision on the issue of mense profit. On 26.06.2009, judgement and order has been passed by the learned Sub-Judge-I, Kathiar awarding mense profit in favour of the plaintiff-respondent no.1 for the period 10.02.1996 to 15.01.2004. Against the said judgement and order, the appellant filed Title Appeal No.05 of 2010 in the court of District Judge, Katihar. By the order dated 28.05.2014, court of District Judge, Katihar returned Title Appeal No.05 of 2010 to the appellants on the ground that the valuation of the memo of appeal lies outside its pecuniary jurisdiction. Accordingly, the appellants filed First Appeal No. 12 of 2015 before the Hon'ble Court. By the order dated 28.08.2015, the Hon'ble Court has been pleased to return the memo of aforesaid Appeal and thus, this Title Appeal 05 of 2010 has been filed.

5. Following issues have been framed by the learned trial court for determination in the suit:

- (i) Whether the suit is maintainable ?
- (ii) Whether the suit is barred by limitation ?
- (iii) Whether the plaintiff has got valid cause of action for the suit ?
- (iv) Whether the suit is barred on account of non-impleadment of necessary party and on account of impleadment of unnecessary party ?

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(v) Whether the defendant Indian Oil Corporation Ltd. remained in illegal occupation of the suit land from the very beginning till vacation of the suit land ?

(vi) Is the plaintiff entitled to get decree for compensation as sought for by the plaintiff ?

(vii) Is the plaintiff liable to pay court fees on the amount of compensation as sought for ?

(viii) Is the plaintiff entitled to get the reliefs as sought for ?

(ix) Is the plaintiff entitled to get any other relief/reliefs ?

6. By the impugned order and decree, the learned trial court granted Rs.5,71,000/- as mense profit with interest of 9% per annum till the date of payment.

7. It has been submitted on behalf of the appellants that on 19/05/1995, an advertisement for establishment of retail outlet/petrol pump at Barsoi in the district of Katihar was published inviting the landlords to make available the land, minimum area 100 x 100 feet and the last date for the application was fixed on 01/06/1995 till 3 P.M. On perusal of the said advertisement, the interested persons including the respondent no.1 - plaintiff submitted offer letter before the office of the applicant at Patna, along with the sale deed and other relevant documents regarding the ownership and possession of the land. The respondent no.1- plaintiff herself submitted offer letter on 31/05/1995 in the office of the appellant and after proper scrutiny, the offer letter of respondent no.1 was selected and thereafter negotiation for fixation of rent between the applicant and respondent no.1 was held and it was finalised and accepted by the respondent. As per the terms, rent was finalised at ₹5000 per annum and the period of lease was finalised for 30 years and after completion of 10 years, 15% amount of the rent will be increased. Thereafter, the respondent no.1 handed over the possession of the suit land to the appellant and the possession of the land was taken by the appellant on 21/05/1995. On the basis of the document, the appellant took the possession of the suit land from the respondent no.1 and approached

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to the District Magistrate, Katihar to obtain permission for establishment of the petrol pump at the site and the District Magistrate, Katihar, by letter no.4973 dated 02/11/1995, granted permission(no objection certificate)to the appellant for operating the petrol pump at the site. The appellant constructed the structure of petrol pump and their petrol pump came in operation and the business of the appellant was started. The petrol pump was properly functioning under the dealership of Banwari Singh, but Banwari Singh was appointed as Assistant Engineer in the State Government and so he resigned and then the appellant offered dealership to the second person of panel of selected candidates, namely Upendra Prasad Singh (defendant no. 5/A) and he was properly doing business at the site. The respondent started disturbance at the site illegally, their willingness to illegally operate the outlet for which applicant has taken adequate steps at that time and the appellant informed the local police station about the illegal activity of the plaintiff's mischief and the suit was filed. The registration of the deed deed was not executed due to delaying attitude of the land owner and her intention to litigate so that the outlet could not become operational at the right time or their willingness to illegally operate the retail outlet for which the appellant has taken adequate steps at that time. The appellants have completely denied the contrary allegations of the plaintiff in the plaint. The appellants had instructed the local lawyer of Katihar court to do proper pairvi and inform the status of the case to the office of the appellants, but unfortunately lawyer failed to do proper "pairvi" at the proper stage of the case and concerned lawyer did not inform the status of the case to the appellant and such additional written statement was not submitted by the appellant after the amendment which was allowed to be made in the plaint of the respondent- plaintiff. The appellants also could not file the copy of documents in support of case and also witnesses of plaintiff's were not cross examined due to laches of the Advocate, Katihar and appellants did not know the status of the case. The suit was decreed on the hearing of plaintiff only and appellant was directed to vacate the land within the three months as passed on 13/8/2003 by learned

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Sub- Judge, Katihar. Respondent no.1 was aggrieved from the decree in respect of damage and so she filed First Appeal no 10 of 2003, but notice of this appeal was not served on the appellants and the said appeal was heard ex-parte and learned court of Additional District Judge -I allowed the appeal with direction to court below to hear the matter again, but appellants were not informed and notice was never served while the address of office of appellant is very much well known to the respondent. The learned court heard the matter again and passed the decree with mense profits and damage against the appellants as ex-party. The respondent filed execution case against judgement and decree vide Execution case number 72 of 2009 before learned Sub Judge-I Katihar and notice of case was served on the same address. After service of the notice, the appellants enquired the record of the case and found the facts and status of the case and thereafter the present appeal was filed by the appellants. It has been submitted on behalf of appellant that from the aforesaid facts it is very much clear that respondent mischievously and dishonestly got the decree of the mense profit ex-parte. It was very much surprising that the notice of Title Appeal No. 10 of 2003 and the notice of the Title suit number 14, 1996 after the order passed in Title Appeal No. 10 of 2003 was not served and on the same address, the notice of Execution case was served which shows that the respondent-plaintiff managed the postal process and got the decree ex- parte. The decree passed on 13/8/2003 by the learned Additional District Judge-I Katihar in the original suit number 14 of 1996 has already been complied by the appellants and premises have been vacated honouring the court order in 2003 itself. The appellants has no knowledge about any further steps taken by the respondent no.1 by filing Title Appeal no. 10 of 2003, and its remand order and further decree passed by the learned Sub- Judge -Ist in Title suit number 14 of 1996 on 26/9/2009. It is also relevant that the land owner has already sold the suit land after the decree of the suit. The appellants are always ready to pay the agreed amount as per agreement for the period of the land for eight years approximately (21/8/1995, 25/9/2003). The appellants strived to pay the rent dues, but the land

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owner has continuously refused to take the rent due to the case of the suit land. Due to the mistake of the lawyer doing pairvi before the learned court below the appellants have already suffered a lot and decree was passed against appellants without hearing and without proper appreciation of the documents and evidence of the appellants and this appellant is suffering irreparable loss which cannot be justified without hearing the appellants in the original suit, hence record be remanded back to the learned court below after setting aside the impugned judgement and decree dated 26/06/2009 with the direction to the court below to hear the suit on facts and law and to pass necessary order, so that justice can be done.

It has further been submitted while elaborating the arguments advanced on behalf of the appellants that it is to be decided in this appeal as to whether the occupation/possession of the land in question by appellants was an illegal possession of the same or the permissive possession. Further, whether the appellants was at fault for not getting the lease deed agreement registered, and if appellants were at fault, then only liable for the same and for the claims. Further, whether the mense profit by respondent was legally permissible and whether the court by allowing the said claim acted within the confines of the law as contained under order 22 rule 12 Code of Civil Procedure. It has been submitted that so far as the occupation/possession of the appellants is concerned, the appellants invited tender from intending landlord/landlady for starting of an outlet to sell petroleum products and as per tender, the appellants had also made fully aware to indenting landlord to furnish documents specified in the respective tender and to execute the registered lease deed for 30 years and to deliver the possession to construct the outlet as per approved map. The appellants represent an establishment of Government of India and do not earn for an individual rather for the nation by serving the People of India. Several intending landlords submitted their respective applications, accepting the terms and conditions of the advertisement, but tender of respondent was accepted, finding suitable land for the outlet and also as per norms. The landlady who is the respondent in this appeal duly

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delivered the possession of land in question and agreed to execute registered lease deed in favour and handed over the land and has duly signed the handing over/taking over memo and also mentioning in the rate of rent as agreed to accept by the landlady respondent at the rate of ₹5000 per annum and the appellants also agreed to the same, which is not in dispute. The appellants with consent of the respondent invested huge amount of public money for creation of assets for sale of petroleum products from the land in question and accordingly the business was started by the dealer but the landlady respondent avoided to execute registered lease deed even after the receipt of several notices and they were sent on different dates. When the landlady found outlet business is flourishing, then she started blackmailing as a result of which when appellants did not agree to any illegal demand against the terms and conditions of tender, a Title suit for eviction on false, baseless ground was filed against the appellants. In the above facts and circumstances, the landlady respondent was under obligation to discharge her obligation as per advertisement/tender, execute and register the lease deed for the land which was handed over to the appellants by the respondent landlady. The notice sent, speak themselves in volume and the appellants made sincere efforts to discharge it obligation, but only on account of the dishonest intention of land lady, a deed of lease could not be executed and registered. Hence, sufficient time had passed and appellants through his licensee/dealer remained in occupation of the suit land, even in absence of registered lease deed and as such there was no fault on the part of the appellants. From the above facts and acknowledgment of the respondent, the appellants and dealer cannot be termed as illegal occupants, rather they were in permissible occupation or possession. So far as illegal occupation/possession is concerned, it may be only when without the consent of landlord/ landlady, occupation is taken and continue to occupy but in this case, appellants and dealer was delivered the possession of the land in question by the landlady herself. It has further been submitted on behalf of appellants that when the appellants agreed to make the payment of ₹5000 per annum, which was acknowledged or

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agreed to receive the same by landlady, in that case, the landlady is only entitled to receive the same for the occupation and appellants had/has been always ready to make the payment of the agreed amount of the rent, and besides the same, landlady is not entitled to claim the mense profit particularly when there was no illegal possession against the wish of the landlady. The appellants have made no additional profit out of the business rather loss because after starting the business through outlet, the appellants had to stop the same and vacated by the court orders and huge investment on construction went in vain. From the above loss, on account of huge investment, appellants had been ordered to maintain status quo resulting in the loss of business and in this way suffered two way. Further, there is a specific provisions in the Code of Civil Procedure under order 20 rule 12 for the prerequisite of an enquiry report for the assessment of the mense profit and the mense profit for which there is no ground and reason to ascertain the same. Therefore, at first, the appellants had never been at fault and, therefore, appellants are not liable to pay mense profit and ascertainment of the same. Moreover the mense profit has been ordered to be paid without following prescribed provision under under 22 rule 12 of the Code of Civil Procedure and also under provisions of Indian Contract Act without following those provision considering loss occurred to whom and who is entitled to claim mense profit/ compensation. Further, the respondents have acquiesced the possession of the appellants as tenant/lessee. The mense profit in this background if the appellants are found in possession as a tenant/lessee on principal of tacit permission (permissible possession), in that case, mense profit is passed from the date of order if not vacated, but the appellants as per direction of the court vacated within the prescribed period of the court. It has further been submitted that respondents have sold out the land in question by virtue of two registered separate sale deeds dated 24/4/2009, and as per sale deed, the consideration money has been mentioned in column 4 of deed Rs. 1,05,000 for the area 20 dismissals and for area three dismissals. In another sale deed on the same date, consideration money has

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been mentioned as ₹1,00,000 only and in this view of the matter, if amount of profit is ascertained more than ₹2,05,000 /- the same would be wrong in view of provisions of Contract Act.

8. On the other hand, it has been submitted on behalf of the respondent no.1- plaintiff that it is the case of the plaintiff-respondent that the suit land of Mouza Sultanpur, Thana No.132, Tauzi No.52, Anchal and Thana Barsoi bearing chak khata no. 192, chak Khesra No.2010, area 0.23 acres bearing new khata no.137, new khesra no.2089 area 23 acre was purchased by the plaintiff by registered sale deed dated 17.04.1995. After purchase, the plaintiff-respndent no.1 came in possession of the aforesaid land and the said land has been mutated in the name of the plaintiff-respondent no.1. The said land is bounded by road in the north, by part of the land of aforesaid Khesra in the South, East and West. Defendant no.7 namely Banwari Singh was acquainted with the plaintiff-respondent no.1 who got licence from the appellant Indian Oil Company for opening Petrol Pump. Said defenedant no.7 told the plaintiff-respondent no.1 that if she would give land, he can start petrol pump and he promised to give share in the profit. Taking into confidence, he also obtained signature of the plaintiff-respondent no.1 on some blank papers. However, said defendenat no.7 namely Banwari Singh got government job on account of which, the Indian Oil Corporation gave licence for opening the petrol pump to some other person. Thereafter, the plaintiff-respondent no.1 and her husband asked the Company as well as the new licence holder not to do any work on the said land but they did not listen and continued their illegal work. The plaintiff also submitted written application in the police station but no action was taken. Hence, the plaintiff-respondent no.1 filed the suit. Further case of the plaintiff-respondent no.1 is that the plaintiff-respondent no.1 has never executed any agreement in favour of the company and if any such document is found in existence, the same is forged and fabricated. Further, in course of illegal possession of the respondents on the suit land, initially, the rent of the said land was 0.50 paise per square feet per month which has been enhanced to

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rupees 1.50 paise. Further, only defendants no.1 and 5 of the suit have preferred this appeal and the appeal has not been preferred by all the defendants of the suit. Further, appellant no.2 had also preferred an appeal against the judgment and decree bearing Appeal No. 3 of 2010 which has been dismissed on account of non - compliance. The plaintiff - respondent no.1 had filed an application for injunction which was dismissed by the learned trial court against which Miscellaneous Appeal No.06 of 1996 was filed in which the order of the learned trial court was set aside and it was ordered that no construction will be made on the land in question and the physical feature of the land would not be changed till the disposal of the suit but despite of the aforesaid order, the appellants started petrol pump on the land in question and for violation of the aforesaid order, a Miscellaneous Case bearing 09 of 1999 is pending in the court of learned Sub - Judge. It has further been submitted that the contention of the appellants that document with respect to the rent was prepared and the rent was fixed at the rate of Rs.5000/- per annum and it is the plaintiff who handed over the possession of the land in question himself to the appellants is factually incorrect. True fact is that the appellants had forcibly captured the land of the plaintiff-respondent and was operating a petrol pump on the land in question. This is fortified from the fact that in the application dated 16.01.2010 filed under order 15, rule-1 by the original defendant it was not mentioned that they are tenants and are ready to vacate the land. The appellants remained in possession of the land in question from 10.02.1996 to 15.01.2004. The learned trial court has considered the matter elaborately and its finding is based on Exhibit-1 which is the land valuation certificate issued by Circle Officer, Barsoi. The plaintiff produced oral and documentary evidences in original Title Suit No.14 of 1996 but the appellants- respondents have failed to produce any evidence. It has further been submitted on behalf of respondent - plaintiff that this Appeal has been preferred after about one year of the impugned judgment and decree. It has further been submitted on behalf of the respondent - plaintiff that the appellants have appeared in Execution Case No.7 of 2009 in

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which the appellants had filed an application that the appellants are ready to pay rent for eight years. However, the said application has been withdrawn by the appellants. It has further been submitted that the appellants -respondents failed to produce any agreement with respect to land in the Title Suit No.14 of 1996 and if any document is there in existence, the same is void. It has further been submitted that it is an admitted position that the land in question does belong to the plaintiff and the appellants remained in the possession of the same. Therefore, it has been submitted that this appeal is devoid of any merit and the same is fit to be dismissed.

9. In appeal, the appellants have produced and exhibited the following documents on 21.08.2019

Exhibit-A- Negotiation of land rental/terms and conditions.

Exhibit-A/1- Photocopy of the acceptance of the terms and conditions by the plaintiff – respondent no.1

Exhibit-A/2 Notice of Chief Divisional Manager

Exhibit-A/3 copy of sale deed executed in favour of the plaintiff – respondent no.1

Exhibit-A/4- Photocopy of Rent receipts issued in favour of the plaintiff – respondent no.-1

Exhibit-A/5- Photocopy of Legal Opinion

Exhibit- A/6 -Photocopy of non encumbrance certificate with respect to land

Exhibit- A/7 – Photocopy of receipt for search and copy

Exhibit- A/8 Photocopy of non encumbrance certificate with respect to land

Exhibit- A/9- Photocopy of the report of the valuer with respect to rent of land per year.

Exhibit- A/10- Photocopy of the inter office memo

Exhibit- A/11- Photocopy of “Sampatti Awbhar Praman Patra”

Exhibit- A/12- Photocopy of phonogram dated 07.07.1995 by Indian Oil Corporation addressed to Gayatri Devi

Exhibit- A/13- Photocopy of Inter Office Memo

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Exhibit- A/14- photocopy of the letter no.226 dated 28.06.1995 with respect to valuation of land and the rate of annual rent

Exhibit- A/15- Photocoy of the Letter dated 20.06.1995 of Surveyor namely Kamta Prasad

Exhibit- A/16- Photocopy of the sketch map

Exhibit-A/17 Photocopy of the envelope of the letter of proposal for retail outlet sent by Gayatri Devi to Indian Oil Company

Exhibit- A/18- Photocopy of the advertisement for site of retail outlet

Exhibit- A/19- Photocopy of the order of formation of Tender Opening Committee

Exhibit- A/20- Photocopy of the advertisement for site of retail outlet published in Hindustan Times on 03.01.1995

Exhibit-A/21- Photocopy of letter of proposal of offer for retail outlet addressed to Banwari Singh

Exhibit- A/22- Photocopy of the document of handing over/ taking over possession of the land

Exhibit- A/23- Photocopy of the letter no. 4973/C of the District Magistrate, Katihar.

10. One of the arguments raised on behalf of the appellants is that the appellants- defendants did not get proper opportunity to prosecute their case before the learned trial court on account of laches on the part of their learned Advocate and the case may be remanded back. However, as mentioned hereinabove, the appellants- defendants got opportunity to file their documents at the stage of appeal. Therefore, in the considered view of this court, it will be better to decide this appeal on its merit after analyzing the documents and considering the same rather than to remand the case to learned trial court for re-hearing and re- consideration. Therefore, this appeal is being decided on its merit without remanding back the matter to the learned trial court.

11. On the basis of the pleadings of party, argument advanced on behalf of the parties and the materials available on the record, following points arise for determination in this appeal :-

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- (i) Whether the appellants- defendants were in permissive possession of the suit land or they remained in illegal possession of the suit land ?
- (ii) Whether the plaintiff- respondent no.1 was liable for non - execution of the deed of lease with respect to the suit land ?
- (iii) Whether the plaintiff- respondent no. 1 is entitled to get the mense profit of the suit land ?
- (iv) Whether the plaintiff - respondent is entitled to get the amount of the mense profit which has been awarded by the learned trial court by the impugned judgment ?
- (v) Whether this appeal is barred by limitation ?

Issues No. (i), (ii) and (iii)- 12. All these three issues are interconnected and the main issues for the purpose of deciding this appeal. Therefore, all these three issues are taken together first.

13. In this connection, the case of the apellants-defendants is that on 19/05/1995, an advertisement for establishment of retail outlet/petrol pump at Barsoi in the district of Katihar was published inviting the landlords to make available the land, minimum area 100 x 100 feet and the last date for the application was fixed on 01/06/1995 till 3 P.M. On perusal of the said advertisement, the interested persons including the respondent no.1 - plaintiff submitted offer letter before the office of the apellant at Patna, along with the sale deed and other relevant documents regarding the ownership and possession of the land. The respondent no.1- plaintiff herself submitted offer letter on 31/05/1995 in the office of the appellant and after proper scrutiny, the offer letter of respondent no.1 was selected and thereafter negotiation for fixation of rent between the applicant and respondent no.1 was held and it was finalised and accepted by the respondent. As per the terms, rent was finalised at ₹5000 per annum and the period of lease was finalised for 30 years and after completion of 10 years, 15% amount of the rent will be increased. Thereafter, the respondent no.1 handed over the possession of the

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suit land to the appellant and the possession of the land was taken by the appellant on 21/05/1995. On the basis of the document, the appellant took the possession of the suit land from the respondent no.1 and approached to the District Magistrate, Katihar to obtain permission for establishment of the petrol pump at the site and the District Magistrate, Katihar, by letter no.4973 dated 02/11/1995, granted permission(no objection certificate)to the appellant for operating the petrol pump at the site. The appellant constructed the structure of petrol pump and their petrol pump came in operation and the business of the appellant was started. The petrol pump was properly functioning under the dealership of Banwari Singh, but Banwari Singh was appointed as Assistant Engineer in the State Government and so he resigned and then the appellant offered dealership to the second person of panel of selected candidates, namely Upendra Prasad Singh (defendant no. 5/A) and he was properly doing business at the site. The respondent started disturbance at the site illegally, their willingness to illegally operate the outlet for which applicant has taken adequate steps at that time and the appellant informed the local police station about the illegal activity of the plaintiff's mischief and the suit was filed. The registration of the deed deed was not executed due to delaying attitude of the land owner and her intention to litigate so that the outlet could not become operational at the right time or their willingness to illegally operate the retail outlet for which the appellant has taken adequate steps at that time. The appellants have completely denied the contrary allegations of the plaintiff in the plaint. The appellants had instructed the local lawyer of Katihar court to do proper pairvi and inform the status of the case to the office of the appellants, but unfortunately lawyer failed to do proper "pairvi" at the proper stage of the case and concerned lawyer did not inform the status of the case to the appellant and such additional written statement was not submitted by the appellant after the amendment which was allowed to be made in the plaint of the respondent- plaintiff. The appellants also could not file the copy of documents in support of case and also witnesses of plaintiff's were

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not cross examined due to laches of the Advocate, Katihar and appellants did not know the status of the case. The suit was decreed on the hearing of plaintiff only and appellant was directed to vacate the land within the three months as passed on 13/8/2003 by learned Sub- Judge, Katihar. Respondent no.1 was aggrieved from the decree in respect of damage and so she filed First Appeal no 10 of 2003, but notice of this appeal was not served on the appellants and the said appeal was heard ex-parte and learned court of Additional District Judge -I allowed the appeal with direction to court below to hear the matter again, but appellants were not informed and notice was never served while the address of office of appellant is very much well known to the respondent. The learned court heard the matter again and passed the decree with mense profits and damage against the appellants as ex-party. The respondent filed execution case against judgement and decree vide Execution case number 72 of 2009 before learned Sub Judge-I Katihar and notice of case was served on the same address. After service of the notice, the appellants enquired the record of the case and found the facts and status of the case and thereafter the present appeal was filed by the appellants. It has been submitted on behalf of appellant that from the aforesaid facts it is very much clear that respondent mischievously and dishonestly got the decree of the mense profit ex-parte. It was very much surprising that the notice of Title Appeal No. 10 of 2003 and the notice of the Title suit number 14, 1996 after the order passed in Title Appeal No. 10 of 2003 was not served and on the same address, the notice of Execution case was served which shows that the respondent-plaintiff managed the postal process and got the decree ex- parte. The decree passed on 13/8/2003 by the learned Additional District Judge-I Katihar in the original suit number 14 of 1996 has already been complied by the appellants and premises have been vacated honouring the court order in 2003 itself. The appellants has no knowledge about any further steps taken by the respondent no.1 by filing Title Appeal no. 10 of 2003, and its remand order and further decree passed by the leanred Sub- Judge -Ist in Title suit number 14 of 1996 on 26/9/2009. It is also relevant that the land owner has

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already sold the suit land after the decree of the suit. The appellants are always ready to pay the agreed amount as per agreement for the period of the land for eight years approximately (21/8/1995, 25/9/2003). The appellants strived to pay the rent dues, but the land owner has continuously refused to take the rent due to the case of the suit land. Due to the mistake of the lawyer doing pairvi before the learned court below the appellants have already suffered a lot and decree was passed against appellants without hearing and without proper appreciation of the documents and evidence of the appellants and this appellant is suffering irreparable loss which cannot be justified without hearing the appellants in the original suit, hence record be remanded back to the learned court below after setting aside the impugned judgement and decree dated 26/06/2009 with the direction to the court below to hear the suit on facts and law and to pass necessary order, so that justice can be done.

It is the further case of the appellants that it is to be decided in this appeal as to whether the occupation/possession of the land in question by appellants was an illegal possession of the same or the permissive possession. Further, whether the appellants was at fault for not getting the lease deed agreement registered, and if appellants were at fault, then only liable for the same and for the claims. Further, whether the mense profit by respondent was legally permissible and whether the court by allowing the said claim acted within the confines of the law as contained under order 22 rule 12 Code of Civil Procedure. It has been submitted that so far as the occupation/possession of the appellants is concerned, the appellants invited tender from intending landlord/landlady for starting of an outlet to sell petroleum products and as per tender, the appellants had also made fully aware to indenting landlord to furnish documents specified in the respective tender and to execute the registered lease deed for 30 years and to deliver the possession to construct the outlet as per approved map. The appellants represent an establishment of Government of India and do not earn for an individual rather for the nation by serving the People of India. Several intending landlords submitted their respective applications, accepting

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the terms and conditions of the advertisement, but tender of respondent was accepted, finding suitable land for the outlet and also as per norms. The landlady who is the respondent in this appeal duly delivered the possession of land in question and agreed to execute registered lease deed in favour and handed over the land and has duly signed the handing over/taking over memo and also mentioning in the rate of rent as agreed to accept by the landlady respondent at the rate of ₹5000 per annum and the appellants also agreed to the same, which is not in dispute. The appellants with consent of the respondent invested huge amount of public money for creation of assets for sale of petroleum products from the land in question and accordingly the business was started by the dealer but the landlady respondent avoided to execute registered lease deed even after the receipt of several notices and they were sent on different dates. When the landlady found outlet business is flourishing, then she started blackmailing as a result of which when appellants did not agree to any illegal demand against the terms and conditions of tender, a Title suit for eviction on false, baseless ground was filed against the appellants. In the above facts and circumstances, the landlady respondent was under obligation to discharge her obligation as per advertisement/tender, execute and register the lease deed for the land which was handed over to the appellants by the respondent landlady. The notice sent, speak themselves in volume and the appellants made sincere efforts to discharge it obligation, but only on account of the dishonest intention of land lady, a deed of lease could not be executed and registered. Hence, sufficient time had passed and appellants through his licensee/dealer remained in occupation of the suit land, even in absence of registered lease deed and as such there was no fault on the part of the appellants. From the above facts and acknowledgment of the respondent, the appellants and dealer cannot be termed as illegal occupants, rather they were in permissible occupation or possession. So far as illegal occupation/possession is concerned, it may be only when without the consent of landlord/ landlady, occupation is taken and continue to occupy but in this case, appellants and dealer was delivered the possession of the

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land in question by the landlady herself. It has further been submitted on behalf of appellants that when the appellants agreed to make the payment of ₹5000 per annum, which was acknowledged or agreed to receive the same by landlady, in that case, the landlady is only entitled to receive the same for the occupation and appellants had/has been always ready to make the payment of the agreed amount of the rent, and besides the same, landlady is not entitled to claim the mense profit particularly when there was no illegal possession against the wish of the landlady. The appellants have made no additional profit out of the business rather loss because after starting the business through outlet, the appellants had to stop the same and vacated by the court orders and huge investment on construction went in vain. From the above loss, on account of huge investment, appellants had been ordered to maintain status quo resulting in the loss of business and in this way suffered two way. Further, there is a specific provisions in the Code of Civil Procedure under order 20 rule 12 for the prerequisite of an enquiry report for the assessment of the mense profit and the mense profit for which there is no ground and reason to ascertain the same. Therefore, at first, the appellants had never been at fault and, therefore, appellants are not liable to pay mense profit and ascertainment of the same. Moreover the mense profit has been ordered to be paid without following prescribed provision under under 22 rule 12 of the Code of Civil Procedure and also under provisions of Indian Contract Act without following those provision considering loss occurred to whom and who is entitled to claim mense profit/ compensation. Further, the respondents have acquiesced the possession of the appellants as tenant/lessee. The mense profit in this background if the appellants are found in possession as a tenant/lessee on principal of tacit permission (permissible possession), in that case, mense profit is passed from the date of order if not vacated, but the appellants as per direction of the court vacated within the prescribed period of the court. It has further been submitted that respondents have sold out the land in question by virtue of two registered separate sale deeds dated 24/4/2009, and as per sale deed, the

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consideration money has been mentioned in column 4 of deed Rs. 1,05,000 for the area 20 dismissals and for area three dismissals. In another sale deed on the same date, consideration money has been mentioned as ₹1,00,000 only and in this view of the matter, if amount of profit is ascertained more than ₹2,05,000 /- the same would be wrong in view of provisions of Contract Act.

14. On the other hand, it has been submitted on behalf of the respondent no.1- plaintiff that it is the case of the plaintiff-respondent that the suit land of Mouza Sultanpur, Thana No.132, Tauzi No.52, Anchal and Thana Barsoi bearing chak khata no. 192, chak Khesra No.2010, area 0.23 acres bearing new khata no.137, new khesra no.2089 area 23 acre was purchased by the plaintiff by registered sale deed dated 17.04.1995. After purchase, the plaintiff-respndent no.1 came in possession of the aforesaid land and the said land has been mutated in the name of the plaintiff-respondent no.1. The said land is bounded by road in the north, by part of the land of aforesaid Khesra in the South, East and West. Defendant no.7 namely Banwari Singh was acquainted with the plaintiff-respondent no.1 who got licence from the appellant Indian Oil Company for opening Petrol Pump. Said defenedant no.7 told the plaintiff-respondent no.1 that if she would give land, he can start petrol pump and he promised to give share in the profit. Taking into confidence, he also obtained signature of the plaintiff-respondent no.1 on some blank papers. However, said defendenat no.7 namely Banwari Singh got government job on account of which, the Indian Oil Corporation gave licence for opening the petrol pump to some other person. Thereafter, the plaintiff-respondent no.1 and her husband asked the Company as well as the new licence holder not to do any work on the said land but they did not listen and continued their illegal work. The plaintiff also submitted written application in the police station but no action was taken. Hence, the plaintiff-respondent no.1 filed the suit. Further case of the plaintiff-respondent no.1 is that the plaintiff-respondent no.1 has never executed any agreement in favour of the company and if any such document is found in existence, the same is

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forged and fabricated. Further, in course of illegal possession of the respondents on the suit land, initially, the rent of the said land was 0.50 paise per square feet per month which has been enhanced to rupees 1.50 paise. Further, only defendants no.1 and 5 of the suit have preferred this appeal and the appeal has not been preferred by all the defendants of the suit. Further, appellant no.2 had also preferred an appeal against the judgment and decree bearing Appeal No. 3 of 2010 which has been dismissed on account of non-compliance. The plaintiff - respondent no.1 had filed an application for injunction which was dismissed by the learned trial court against which Miscellaneous Appeal No.06 of 1996 was filed in which the order of the learned trial court was set aside and it was ordered that no construction will be made on the land in question and the physical feature of the land would not be changed till the disposal of the suit but despite of the aforesaid order, the appellants started petrol pump on the land in question and for violation of the aforesaid order, a Miscellaneous Case bearing 09 of 1999 is pending in the court of learned Sub - Judge. It has further been submitted that the contention of the appellants that document with respect to the rent was prepared and the rent was fixed at the rate of Rs.5000/- per annum and it is the plaintiff who handed over the possession of the land in question himself to the appellants is factually incorrect. True fact is that the appellants had forcibly captured the land of the plaintiff-respondent and was operating a petrol pump on the land in question. This is fortified from the fact that in the application dated 16.01.2010 filed under order 15, rule-1 by the original defendant it was not mentioned that they are tenants and are ready to vacate the land. The appellants remained in possession of the land in question from 10.02.1996 to 15.01.2004. The learned trial court has considered the matter elaborately and its finding is based on Exhibit-1 which is the land valuation certificate issued by Circle Officer, Barsoi. The plaintiff produced oral and documentary evidences in original Title Suit No.14 of 1996 but the appellants- respondents have failed to produce any evidence. It has further been submitted on behalf of respondent - plaintiff that this Appeal has been preferred

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after about one year of the impugned judgment and decree. It has further been submitted on behalf of the respondent – plaintiff that the appellants have appeared in Execution Case No.7 of 2009 in which the appellants had filed an application that the appellants are ready to pay rent for eight years. However, the said application has been withdrawn by the appellants. It has further been submitted that the appellants -respondents failed to produce any agreement with respect to land in the Title Suit No.14 of 1996 and if any document is there in existence, the same is void. It has further been submitted that it is an admitted position that the land in question does belong to the plaintiff and the appellants remained in the possession of the same.

15. As stated hereinabove, several documents have been exhibited on behalf of appellants at the stage of appeal on 21.08.2019.

From the perusal of Exhibit A which is the document of finalization/ Negotiation of land rental/ terms and conditions for development of proposed dealership, it transpires that it has been clearly mentioned therein that Letter of Intent was issued in favour of Banwari Singh. In the aforesaid Exhibit-A, it has also been mentioned that on date the negotiation committee discussed the matter elaborately on various aspects with Smt. Gayatri Devi. On the said date, terms and conditions were finalized. Said document is dated 18.07.1995. On the said date, Gayatri Devi also issued a letter in favour of the Indian Oil Company accepting the terms and conditions. In consequence of aforesaid, Gayatri Devi also issued a certificate with respect to handing over possession of the said land with effect from 21.08.1995, the photocopy of which is Exhibit A/22. Although, issuance of such letter and certificate has been denied by the plaintiff- respondent no.1 but it is the case of the respondent- plaintiff that said Banwari Singh had obtained the signature of the plaintiff-respondent on some blank papers. Therefore, if the respondent-plaintiff has signed on some blank paper, she is responsible for the

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same and now she cannot be allowed to say that she has not signed the paper of agreement. Moreover, there is nothing to show that even after knowing about the fact of execution of agreement by plaintiff, no criminal case has been filed on behalf of the plaintiff against said Banwari Singh for creating false documents using the signature of the plaintiff. However, even if it is accepted that the plaintiff- respondent no.1 namely Gayatri Devi has issued the said letter and certificate then also, the said letter of acceptance of terms and conditions has been issued under the impression that the dealership is to be given to Banwari Singh who, according to the case of plaintiff- respondent no.1 was acquainted with said plaintiff-respondent no.1 namely Gayatri Devi. Therefore, the terms and conditions were accepted and possession of land by Gayatri Devi plaintiff - respondent no.1 was contingent upon the fact that dealership was to be given to said Banwari Singh. However, according to the case of the appellants- defendants itself, said dealership in favour of said Banwari Singh has been withdrawn. Therefore, as soon as the dealership in favour of Banwari Singh has been withdrawn, the consent given by the plaintiff-respondent for construction of the petrol pump/retail outlet and the consent for handing over possession of land by the plaintiff- respondent to the appellants will be deemed to be revoked. This is further fortified from the fact that ultimately, the plaintiff had to file Title suit against the appellants. Therefore, respondent- plaintiff cannot be held liable for non - execution of deed of lease.

16. From the own showing of the appellant, no lease deed was executed in between the appellant and respondent no.1-plaintiff as will be evident from the perusal of the averments made in paragraphs no. 14 and 16 of the written statement filed on behalf of appellant- defendant no.1. The suit bearing Title Suit No. 14 of 1996 was filed by the plaintiff- respondent no. 1 on 28.02.1996 (as borne out from the plaint) These facts shows that even if it is accepted that the plaintiff- respondent no.1 had handed over the possession of land to the appellant, the appellant cannot be said to be legal

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possession of land after filing of suit by the plaintiff as the contract in between the plaintiff- respondent no.1 and the appellant was not finalized in absence of execution of lease deed. It is also pertinent that even after having come to know that the plaintiff has instituted the aforesaid suit bearing Title Suit No. 14 of 1996, the appellant did not vacate the land of the plaintiff- respondent no.1 and choose to contest the suit. Even no case has been filed on behalf of appellant-defendant no. 1 against the plaintiff- respondent no.1 seeking direction to the plaintiff- respondent no.1 to execute the lease deed.

17. All the aforesaid facts show that the plaintiff-respondent had given her consent for construction of retail outlet/petrol pump and handed over the possession of the land in question to the appellants contingent upon the fact that the dealership will be given to Banwari Singh who was an acquaintance of the plaintiff-respondent but when dealership was not given to Banwari Singh, such consent of the plaintiff-respondent no.1 will be deemed to be revoked and that is why, the plaintiff-respondent did not execute lease of deed for which the plaintiff-respondent are not at fault and she filed Title Suit against the appellants-defendants who even after having come to know that such Title Suit has been filed, did not vacate the land rather choose to contest the suit and even the appellants did not file any case for execution of deed of lease against the plaintiff-respondent Gayatri Devi. Therefore, the appellants came in the possession of the suit land legally but they remained in possession of the suit land illegally after filing of suit by the plaintiff-respondent namely Gayatri Devi. Therefore, it is accordingly held that the appellants came in the possession of the suit land legally but they remained in possession of the suit land illegally after filing of suit by the plaintiff-respondent namely Gayatri Devi. It is also found and held that the respondent-plaintiff namely Gayatri Devi is not at fault for non - execution of deed of lease in favour of appellant and the plaintiff- respondent is entitled to get the mense profit.

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Thus issues no. (i), (ii) and (iii) are hereby decided against the appellants and in favour of the defendant-plaintiff.

Issue No.IV- 18. By the impugned judgement and decree, mense profit in favour of the plaintiff- respondent no.1 for the period 10.02.1996 to 15.01.2004 amounting Rs.5,71,000/- with interest of 9% per annum till the date of payment has been awarded.

19. In appeal, an argument has been raised on behalf of the appellants that appellants that the order for grant of mense profit has been passed without any enquiry as provided under order 20 rule 12 of the Code of Civil Procedure. However, from the perusal of the record as well as the impugned order it transpires that in this respect, Exhibit-1 has been referred to in the impugned order which is the Land Valuation Certificate issued by the Circle Officer, Barsoi. However, from the impugned order itself it transpires that according to Exhibit-1, the amount comes to Rs.5000/- per month at the rate of 0.50 paise square feet per month. This fact is also borne out from Exhibit-1. However, the plaintiff orally claimed the rate of Rs.1.50 square feet per month but the mense profit has been granted on the basis of the claim of the plaintiff in the plaint which is Rs.200/- per day. For the aforesaid claim of Rs.200/-per day, no document was produced on behalf of the plaintiff-respondent. Therefore, in the considered view of this court, mense profit should have been granted on the basis of Exhibit-1 which is the document of the plaintiff-respondent itself. According to the said Exhibit-1 the amount of mense profit comes to Rs.5000/- per month.

20. Further, from the perusal of the record it also transpires that an application was filed on behalf of defendant no.5A on 16.01.2001 to the effect that he is ready to vacate the land of the plaintiff-appellant within three months but the plaintiff- respondent no.1 filed rejoinder stating and opposing the prayer of respondent no. 5A seeking permission to vacate the land on the ground that such permission will amount to violation of order of injunction granted in

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Misc. Appeal No. 09 of 1999 and lastly, order for vacation could be passed on 13.08.2003. Therefore, the land of the plaintiff-respondent no.1 could not be vacated earlier on account of opposition of the plaintiff and the appellants vacated the land acutally on 25.09.2003. Thefefore, in the considered view of this court, the mense profit should have been granted upto three months of 16.01.2001 i.e. upto 16.04.2001 and not upto 15.01.2004 as has been granted by the impugned order in as much on account of protest by the plaintiff- respondent no.1 on the basis of the order passed in the Miscellaneous Appeal, the appellants- defendants could not hand over possession to the plaintiff - respondent earlier. Further, the mense profit should have been granted from the date of institution of the suit i.e. from 28.02.2026. Accordingly, it is held that the plaintiffs-appellants are entitled to get mense profit from 28.02.1996 to 16.04.2001.

21. Accordingly, in view of discussions made hereinabove , it is found and held that the appellants are liable to pay the plaintiff-respondent the mense profit from 28.02.1996 to 16.04.2001 at the rate of Rs.5000/- (rupees five thousand per month) which comes to total Rs. 308,166.67/- (rupees three lakhs eight thousand one hundred sixty six and paise sixty seven) only.

This issue is accordingly decided in favour of the appellants in part.

Issue No.5- 22. In this respect, submission has been made on behalf of respondent no.1 - plaintiff that this Appeal has been preferred after about one year of the impugned judgment and decree.

From the perusal of the record also it transpires that the appeal has been admitted by the order dated 01.09.2010 subject to limitation. From the perusal of order dated 17.05.2010 it also transpires that an application under section 5 of the Limitation Act was also filed.

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However, it is pertinent to mention here that by the order dated 28.05.2014, court of District Judge, Katihar returned Title Appeal No.05 of 2010 to the appellants on the ground that the valuation of the memo of appeal lies outside its pecuniary jurisdiction. Accordingly, the appellants filed First Appeal No. 12 of 2015 before the Hon'ble Court. By the order dated 28.08.2015, the Hon'ble Court has been pleased to return the memo of aforesaid Appeal and same has been filed on 09.09.2015 i.e. within time. From the perusal of the order dated 28.08.2015, it transpires that the said appeal has been returned as the pecuniary jurisdiction of the this court was enhanced and it further transpires from the website of the Hon'ble Court that a limitation petition was filed on behalf of the appellants before the Hon'ble Court which has been disposed of and thus the said First Appeal no. 12 of 2015 was not dismissed on the ground of limitation. Therefore, it is found and held that this appeal is not barred by limitation. This issue is thus decided in favour of the appellants.

23. In view of discussions made and findings reached hereinabove it is found and held that the appellants are liable to pay the plaintiff-respondent the compensation cum mense profit from 28.02.1996 to 16.04.2001 at the rate of Rs.5000/- (rupees five thousand per month) which comes to total Rs. 308,166.67/- (rupees three lakhs eight thousand one hundred sixty six and paise sixty seven) only.

24. Accordingly, the impugned order and decree dated 26.06.2009 is hereby partially set aside and modified to the extent holding that the appellants are liable to pay the plaintiff-respondent the compensation cum mense profit from 28.02.1996 to 16.04.2001 at the rate of Rs.5000/- (rupees five thousand per month) which comes to total Rs. 308,166.67/- (rupees three lakhs eight thousand one hundred sixty six and paise sixty seven) only. The rest conditions including the condition of payment of interest as mentioned in the operative part of the impugned order will remain as it is .

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Accordingly, this Title Appeal is hereby allowed in part on
contest against respondent no.1 and 2 but without any further cost.
Let a decree be prepared accordingly.

Dictated and corrected by me

(Sandeep Mishra)

District Judge-I

(Sandeep Mishra)

Katihar

District Judge-I

17.06.2026

Katihar

17.06.2026

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