

24 Civ DJ 476/2016 12001/16
RAKESH KUMAR JAIN Vs. SATISH KUMAR

17.10.2025

Present Shri Pradeep Kumar, Ld. Counsel for plaintiff.

Shri Gurpreet Singh, Ms. Raushan Kumari and Shri
Vashesnvi Vashistha, Ld. Counsels for defendant no.1.

An application is moved on behalf of the plaintiff under
Order 6 Rule 17 CPC r/w Section 151 CPC.

Reply to the application filed by the defendant no. 1.

Arguments on the application heard.

Ld. Counsels for both parties have relied upon case laws in
support of their arguments.

Ld. Counsel for the plaintiff submits that the present suit has
been filed for recovery of possession, damages, mesne profits and also for
perpetual and mandatory injunction on the ground that defendant no. 1 is
licencee in the suit premises on the first and ground floor. Despite
revoking his licence, he is not vacating the suit property. It is submitted
that the plaintiff sought the damages / illegal occupation charges of the
suit property from the defendant of Rs. 25,000/- per month for the month
of February and March 2010 as quantified as per para 10 of the plaint and
prayed in prayer clause 2. It is further submitted that inadvertently the
previous Counsel for the plaintiff forgot to claim the future damages/
mesne profit from the month of April 2010 to its final realization/
payment and till the date of the actual vacation of the suit

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property by the defendant no. 1. In these circumstances, the present application has been moved seeking permission to amend the prayer clause no. 2 of the plaint for claiming future damages/ mesne profit till its final realization in future till the date of actual vacation of the suit property by the defendant no. 1 at the rate of Rs. 25,000/- per month. It is submitted that the above amendment in the prayer clause no. 2 of the plaint is formal in nature and will not change the nature of the suit. The plaintiff could not have mentioned this prayer at the time of filing of the suit for the reason mentioned above. Plaintiff will suffer irreparable loss if he is not allowed to amend the prayer clause regarding the mesne profit.

In reply, Ld. Counsel for the defendant no. 1 has submitted that the application filed by the plaintiff is not maintainable. The same is filed with a view to delay the disposal of the case as well as to harass the defendant no. 1. At a belated stage as the evidence of both the parties have already been closed, however, the plaintiff was granted one opportunity to cross examination of DW6. Hence, no such application for amendment can be entertained. Further it is submitted that the plaintiff by way of this application is trying to set up a new case and new reliefs which were not originally prayed for and which will change the nature of the suit. It is submitted that allowing the application will be a de-novo trial of the case. The plaintiff is trying to include the reliefs in the suit which are already time barred as present suit was filed on 05.05.2010. It

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is submitted that defendant no. 1 is enjoying the property in his own right, title and interest and thus the alleged claim of damages is bad in law.

Ld. Counsel for plaintiff has relied upon the following case laws in support of his arguments : *Air India Ltd. v. Atma Ram Properties (P) Ltd. MANU/DE/0981/1996 and Venugopala v. Vasantha AIR 2003 Karnataka 279.*

Ld. Counsel for defendant has relied upon the following case laws in support of his arguments : *Shri Inderjeet Singh Bindra v. Smt. Ramesh Kumari and others CS (OS) 63/2017 decided on 18.11.2024, Vidyabai v. Padmalatha (2009) 2 SCC 409, Vishwambhar and others v. Laxminarayan (dead) through LRs (2001) 6 SCC 163, South Kokan Distilleries and other v. Prabhakar Gajanan Naik and others (2008) 14 SCC 632, T.N. Alloy Foundry Co. Ltd. v. T.N. Electricity Board and others (2004) 3 SCC 392.*

Heard. Record perused.

By way of this application the plaintiff is only claiming mesne profit / damages till realisation of vacant, peaceful possession. As held in the case *Air India Ltd. (supra)* the Court has discretion to order enquiry into the future mesne profits and to award a general relief even if it has not been specifically claimed in the plaint. Further, the Supreme Court in *Gopalekrishna Pillai v. Meenakshi Ayal* MANU/SC/0268/1966 : AIR 1967 SC 155 explained the difference between a claim for past profits and a claim for future profits in a suit for possession. The Supreme

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Court said “Order 20 Rule 12 of CPC enables the Court to pass a decree for both past and future mesne profits, but there are important distinctions in the procedure for enforcement of the two claims. With regard to past mesne profits, the plaintiff has an existing cause of action on the date of institution of the suit. In view of Order 7 Rule 1,2 and 7 CPC and Section 7(1) of the Court Fee Act, a plaintiff must plead a cause of action, specifically claim a decree for past 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....But in a suit to which the provisions of Order 20 Rule 12 apply, the Court has discretionary power to pass a decree directing an enquiry into future mesne profits and the Court may grant a general relief though it is not specifically asked for in the plaint.

By allowing this application, the nature of the suit nowhere changes. The pendency of the suit in the Court for long period by the time does not mean that the damages / mesne profit cannot be claimed by the plaintiff which have accrued during trial. The case laws relied upon by Ld. Counsel for defendant can be distinguished in this case as those case laws are related to cancellation of sale deed and relief of declaration for which specific limitation period is given in the Limitation Act. The present amendment is squarely covered by the Hon’ble Delhi High Court

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case law relied by Ld. Counsel for the plaintiff in *Air India Ltd. (supra)*. Accordingly, the application under Order 6 Rule 17 CPC moved on behalf of the plaintiff **allowed**. Amended plaint is taken on record.

Ld. Counsel for the defendant no. 1 submits that he will file amended WS within two weeks.

Amended WS be filed by the defendant no. 1 within two weeks with advance copy to the Ld. Counsel for opposite party for 06.11.2025.

SUSHEEL BALA DAGAR
DISTRICT JUDGE-08
WEST/DELHI/17.10.2025