

**RSA No. 61 of 2017**

04.08.2017. Present: Mr. G.D. Verma, Senior Advocate with Mr. B.C. Verma, Advocate, for the appellant.

Mr. Neeraj Gupta, Advocate, for respondent No. 1.

**CMP No. 1471 of 2017**

Heard. Subject matter of dispute in the present *//s* is the suit land entered in Khewat Khatauni No. 19/43, Khasra Nos. 812, 813, Kita 2 measuring 1-12-82 hectares situate in village Kathanal-Kelo-Jubbar, Pargana Dharti, Tehsil Theog, District Shimla. A decree for possession thereof has been passed by learned trial Court in favour of the respondent-plaintiff. The appeal preferred by the appellant-defendant also stands dismissed. The present, as such, is a case of concurrent findings recorded by both Courts below against the respondent-plaintiff. In the interim, the operation and execution of the impugned judgment and decree stand stayed vide order passed in this application on 23.3.2017.

The respondent-plaintiff has resisted and contested the application as according to her by virtue of impugned judgment, under challenge, she is entitled to recover the possession thereof from the appellant-defendant. Also that, it is a big chunk of land. The appellant-defendant is enjoying usufruct thereof despite having lost in both Courts below. The submissions so made on behalf of the respondent-plaintiff carries considerable force for the reasons that the suit filed by her is decreed by both Courts below and she is entitled to enjoy usufruct of the decree so passed in her favour. Therefore, in the event of the interim order is made absolute, the respondent-

plaintiff has to be compensated in terms of money i.e. payment of some reasonable amount to her by way of mesne profit.

Admittedly, the land in dispute is 'Ghasni'. However, handsome amount can be earned by selling grass also. The appellant-defendant is an old lady. Therefore, it can reasonably be believed that even if the grass is to be got cut and retrieved therefrom would cost high, however, still the possibility of handsome income from the suit land cannot be ruled out.

Therefore, having regard to the given facts and circumstances, a sum of ₹6000/- per annum is determined as mesne profit payable by the appellant-defendant to respondent-plaintiff by way of mesne profits from the date of the judgment and decree passed by learned Lower appellate Court i.e. 16.12.2016. The amount shall be payable to the respondent-plaintiff by 31<sup>st</sup> December of each and every calendar year by way of deposit thereof in the Registry of this Court. Therefore, the interim order passed in this application is ordered to be made absolute subject to depositing of ₹6000/- by the appellant-defendant in the Registry of this Court on or before 31<sup>st</sup> December during each calendar year till the appeal is finally disposed of. Any departure in this regard shall entail in vacation of this order automatically. The application stands disposed of.

*Copy Dasti.*

(Dharam Chand Chaudhary),  
Judge.

August 04, 2017,  
(vs)