

S.B. CIVIL FIRST APPEAL NO.218/2004

Date of order :: 01.04.2013

HON'BLE MR. JUSTICE ARUN BHANSALI

Mr. R.D.S. Sidhu, for the appellants.

Mr. R.K. Singhal, for the respondent.

The matter comes up on application filed by respondent for grant of mesne profit.

It is, inter alia, submitted that the appeal was admitted on 13.05.2004 and execution of the decree was ordered to remain stay. Thereafter the order dated 13.05.2004 was confirmed by order dated 20.02.2006 passed by this Court and it was ordered to list the appeal for final disposal. However, the final disposal was still taking time and during pendency of the appeal, the land in question has been forcibly taken possession by the appellants, who are now enjoying the possession as well as the interim order from this Court.

Based on the said facts, it has been prayed that either the possession be ordered to be handed back or the appellants be ordered to deposit mesne profit for the land in question @ Rs.10,000/- per begha per year and the same be paid to her.

Time was granted to counsel for the appellants for filing reply to the application on more than one occasion, but no reply to the stay application has been filed.

It is submitted by counsel for the appellants that the application, in the facts and circumstances of the case, is not maintainable. It is contended that the application has been moved at a very belated stage, inasmuch as, the same has been filed after nine years of the passing of decree and the same is

based on absolutely vague averments. No document has been filed to substantiate either the forcible taking of possession by the appellant or in support of claiming Rs.10,000/- per bigha as mesne profit. It is further submitted that when the appeal is ripe for final hearing, there is no reason for passing the interim order at this stage.

From the record of this appeal, it is evident that it was ordered on 20.02.2006 to list the appeal for final disposal on 22.03.2006, thereafter, the appeal was listed before this Court on 24.07.2006 when time was prayed for by counsel appearing for the appellants and thereafter the matter has not been listed before this Court for final disposal since 2006 and the same has come up before this Court again on application filed by the respondent seeking mesne profit as stated above.

The learned trial court had recorded a finding that possession of the land in question was handed over to the plaintiff at the time of execution of the agreement to sale, regarding which, the specific performance was being sought. The said finding has been challenged by the appellant and the execution of agreement itself has been denied and consequential delivery of possession has also been denied. However, it was candidly admitted by counsel for the appellants that the appellants are presently in possession of the land in question.

Admittedly, the decree dated 12.12.2003 for execution of sale deed has been passed in favour of respondent and the same has been stayed by this Court vide order dated 13.05.2004 and in view of the fact that a finding was already on record that the respondent was in possession of the land in question, there was no occasion for this Court to order for payment of any mesne

profit in view of the interim order granted by this Court.

However, in the changed circumstances, without commenting on the allegations made by the respondent in the application regarding forcible possession having been taken by the appellants, in view of the fact that the appellants are in possession of the land in question, it is deemed just and proper to order the appellants to deposit a sum of Rs.5,000/- per bigha per year for the suit land, which is said to be ad measuring 6 bigha and 5 biswa during the pendency of the present appeal before the trial court. The said amount would be put in fixed deposit by the trial court every year for a period of one year and the same shall be renewed on expiry of the said term. The result of the said deposit would follow the final result of this appeal.

The above order is being passed to safeguard the interest of both the parties in view of the fact that despite passing of the order on 20.02.2006 for listing the appeal for final disposal in the year 2006 itself, despite passage of seven years, this Court is not able to decide the present appeal.

The application filed by the respondent stands disposed of accordingly. The amount be deposited by the appellant within a period of four weeks from today for the year April, 2013 to March, 2014 and for the subsequent years the same should be deposited by 15th April each year. In case of failure on part of the appellants to comply with any of the terms of this order, the interim order granted by this Court on 13.05.2004 shall stand vacated.

(ARUN BHANSALI), J.