

Surendra Kumar Grover Vs. Jayanta Roy

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Court : Kolkata

Decided On : Sep-18-1995

Reported in : AIR1996Cal88,(1995)2CALLT457(HC)

Judge : B.M. Mitra, J.

Acts : Civil Procedure Code, 1908 - Sections 2(12), 15 and 151 - Order 7, Rule 10 - Order 14, Rule 2 - Order 20, Rule 12

Appellant : Surendra Kumar Grover

Respondent : Jayanta Roy

Advocate for Def. : S.P. Roy Chowdhury, ;Miss. Rani Srimal and ;Santanu Mukherjee, Advs.

Advocate for Pet/Ap. : Subhrakamal Mukherjee and ;Prodyunna Sinha, Advs.

Judgement :

ORDER

1. The present revisional application is directed against Order No. 13, dated 7-3-1995 passed by the 8th Court of Assistant District Judge at Alipore in Title Suit No. 66 of 1994. By the impugned order, a petition under Section 151 of the Code of Civil Procedure has been rejected which is for a prayer for return of the plaint to the plaintiff for presentation of the same to the Court having proper pecuniary jurisdiction in terms of Section 15 of the Code of Civil Procedure. At the very

outset it has been attempted to be contended that the nomenclature given in the connected petition leading rise to the impugned order being one under Section 151 of the Code of Civil Procedure is manifestly wrong as there are alternative provisions for achieving the same object as envisaged either under Order 7, Rule 10 of the Code of Civil Procedure or even it may be attempted to be done in terms of the proviso super-added to Order 14, Rule 2 of the Code of Civil Procedure. This Court feels that for return of the plaint to the court of proper jurisdiction, there is an alternative provision as provided in the code and in view of the alternative provision, Section 151 of the Code of Civil Procedure is not capable of being invoked. Section 151 of the Code of Civil Procedure will not be available when there is an alternative remedy as the same is accepted to be a well settled ratio of law.

2. The next point which emerges for consideration is as to whether there has been any basis for claim of mesne profits of Rs.31,500/- on a basis of rate of Rs. 500/- per day as mesne profits for 63 days. The controversy which has been attempted to be raised is that the rent being Rs. 400/- per month, then valuation on account of rent ought to have been Rs. 4,800/- being equivalent for 12 months and there cannot be any scope for ascribing mesne profits at the rate of Rs. 500/- per day. The total mesne profits as mentioned in the plaint is for 63 days. There are cases on the point where even the Apex Court has held that after the decree of recovery of possession is passed, the Court can grant stay on terms determining the occupation charges on an approximate basis nearer to the market rate. As reference may be made in this context to the case of Gopal Krishna Pillai v. Meenakshi Ayal, reported in : AIR 1967 SC155 where the Apex Court has held that Order 20, Rule 12 of the Code of Civil Procedure can enable the Court to pass a decree for both past and future mesne profits. With regard to future mesne profits, the court can direct enquiry and it may grant a general relief. A further reference may be made to the decision reported in : [1987]3SCR792 , in the case of Smt. Nandita Bose v. Ratanlal Nahata, where the Supreme Court has held that the claim of mesne profits should not be pre-judge while directing return of the plaint to the proper court. The question of mesne profits has to be decided with the conclusion of the trial and it needs judicial consideration. This Court further tends to rely on an unreported decision passed by this Court in the case of Sukalyan

Acharya v. Smt. Sanchita Sanyal in C.C. No. 2134 of 1994 and the Court opines in the said decision that it is primarily concerned as to the stage when the question of mesne profits can be decided. If the plaint is directed to be returned before the Court at the point of commencement of the proceeding, then the Court will be required to express an opinion as to the correctness of the valuation of the mesne profits. This Court is not unmindful of the well accepted proposition of the premise that the plaintiff has choice in respect of the valuation of the suit and the forum before which it will espouse its cause, the plaint will be required to be read as per valuation statement as it appears from there and if a litigant values his claim on the score of mesne profits, the same assumes a texture of vexatious question of fact and law and the same can be decided only at the time of ultimate decision of the adjudication resulting in passing of the decree. The apprehension that has been expressed may not lead to the sufferance of any prejudice to the defendant/petitioner but the Supreme Court has also given caution not to be unmindful of the dilatory nature of tactics adopted on the score of such disputes. This Court is of the view that in terms of the definition of mesne profits under Section 2(12) of the Code of Civil Procedure, the question of propriety of the valuation on account of the same can be decided at the time of trial on evidence where the Court can pass a decree for mesne profits or can direct an enquiry or can reject prayer of the mesne profits. This Court is of the view that the connected petition under Section 151 leading to the passing of the impugned order is palpably misconceived and the order impugned does not call for any interference for the reasons as stated hereinbefore. Accordingly, the revisional application fails on contest and it stands dismissed but there shall, however, be no order as to cost.

3. Application dismissed