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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

AFR/AD

PRESENT:
Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

Civil Petition No.182 of 2025

[Against the order dated 13.11.2024, passed by the Lahore High Court, Multan Bench, Multan in Civil Revision No.190-D of 2022]

Iftikhar Ali Abbasi and others. ...Petitioner (s)

Versus

Ghulam Qadir and others. ...Respondent(s)

For the Petitioner(s) : Mr. Ibad-ur-Rehman Lodhi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : N.R.

Date of Hearing : 13.05.2025

O R D E R

Mazhar Alam Khan Miankhel, J:- The petitioners being defendants in the main suit for possession of the suit property have impugned the order dated 13.11.2024 of the Lahore High Court, Multan Bench, Multan **(the High Court)**, whereby the concurrent findings of decreeing the suit of the respondents by the two Courts below were upheld and the civil revision of the petitioners was dismissed.

2. We have heard the learned counsel for the petitioners and have also gone through the available record.

3. The record of the case reveals that the respondents, being owner of the property, on the strength of registered sale deeds, filed a suit for possession and *mesne profit* by alleging that

the present petitioners have illegally and unlawfully occupied their property. The suit of the respondents though was contested by the petitioners by filing their written statements but after recording of evidence, the same was decreed by the trial Court and the said decree was maintained by the appellate Court and the High Court by dismissing their appeal and civil revision respectively.

4. The learned counsel for the petitioners at the very outset was asked that as to how he would defend the concurrent findings of facts rendered by the High Court as well as the two Courts below, he frankly submitted at the bar that he is not going to touch the merits of the case, rather he would like to argue his case only on three points, namely, (i) *Mesne profit* (ii) *Res Judicata* (iii) Refusal of additional documents by the appellate Court. This would simply mean that ownership of the respondents is out of question and the possession of the petitioners over the suit property has been established to be illegal and unlawful, as they during the course of trial failed to justify their possession over the suit property. The trial Court while granting the decree in favour of the respondents refused to award *mesne profit* for want of proof but the appellate Court while dismissing the appeal of the petitioners allowed the cross objections of the respondents by awarding *mesne profit* to the tune of Rs.10,000/- per month with 10% annual increase. When ownership and the possession of this property by the respondents goes unrebutted what legal strength and force would have the points to be argued by the learned counsel for the petitioners is the question requiring consideration.

5. The learned counsel for the petitioners argued that grant/imposition of *mesne profit* was based on no cogent reason and there was no evidence of the respondents regarding the same which on the face of it is illegal, unlawful and unwarranted under the law. He went on to argue that the *mesne profit* has only been defined under Section 2 (12) of the Code of Civil Procedure, 1908 **(CPC)** but nowhere a specific criteria for such grant/award is provided.

6. Here in this case the claim of the respondents was for possession of the suit property along-with *mesne profit.* This is an admitted and established fact on the record that the respondents are the owners of the suit property, which was illegally and unlawfully occupied by the petitioners without any legal justification. It is an established fact on the record that the suit property is situated within the city and has got a better location and the potential value. The case of the respondents has also been further strengthened when the learned counsel for the petitioners refused to argue his petition on merits of the case.

Though the trial Court declined to grant *mesne profit* for want of proof but the appellate Court on acceptance of cross objections of the respondents granted/awarded the *mesne profit* to the tune of Rs.10,000/- per month by giving reasons in para-14 of its judgment and that reasoning has not been denied or shattered.

7. The learned counsel for the petitioners in support of his submissions placed reliance on the judgments of *Fateh Chand* vs. *Balkishan Dass* (AIR 1963 Supreme Court 1405 (v 50 C 204), *Hidayatullah and another* vs. *Khurshid Khan* (1987 CLC 832) and

The Aministrator, Lahore Municipal Corporation, Lahore vs. *Abdul Hamid and others* (1987 CLC 1261).

8. We have gone through the judgments so referred by the learned counsel for the petitioners and have also gone through the available record. These judgments are distinguishable and have no bearing on the merits of this case.

9. No doubt that *mesne profit* has been defined in Section 2(12) of the CPC but no specific criteria for award of *mesne profit* except Rule 12 of Order XX CPC is provided. This rule provides a mechanism for assessment of quantum of *mesne profit.* For ease of reference both are reproduced as under: -

> **Section 2(12) of the Code of Civil Procedure (CPC)** defines "mesne profits". Mesne profits refer to the profits that a person wrongfully in possession of property either actually received or could have received with ordinary diligence, including interest, but excluding profits due to improvements made by the wrongful possessor. In essence, it's compensation for the loss of income or benefit to the rightful owner due to the wrongful occupation of their property."
>
> **Order XX, Rule 12 of the Civil Procedure Code (CPC)** deals with decrees related to possession and mesne profits. It allows the court to order an inquiry into the amount of mesne profits payable by a defendant who was in possession of a property, and to pass a final decree accordingly. This rule is particularly relevant in cases where a plaintiff seeks to

> recover possession of property and damages for the defendant's unlawful use of the property."

A bare perusal of the above rule would make it confirm that no hard and fast mechanism/rules can be made in this regard and the criteria for determining the quantum of *mesne profit* is subject to enquiry if the trial Court so directs. This would mean that the quantum of award of *mesne profit* would depend on case to case basis.

10. Here in this case one of the respondents while appearing as witness claimed Rs.50,000/- per month along-with 10% annual increase because of the location of the suit property but this was not accepted by the trial Court but the appellate Court while accepting their cross objections validly gave sound reasons for such award. The argument of the learned counsel for the petitioners that despite the specific ground raised in the civil revision, the learned Judge in Chambers did not give any findings on the same appears to be misconceived.

11. With regard to the said argument of the learned counsel, we are of the considered view that no doubt a specific ground was taken by the petitioners but at the time of hearing what was argued before the Court was reproduced in the impugned order. This would mean that this plea was not argued before the Court at the time of hearing. Besides the above, the petitioners have not taken any specific ground *qua mesne profit* in this petition for leave to appeal. This would amount to an acceptance of all the findings on the said question by the petitioners. So this argument of the learned counsel has no force at

all and legally cannot be allowed to argue a new ground, which is not raised in the memo of petition, unless specially permitted by the Court to argue.

12. Turning to the other argument of the learned counsel regarding bar of present suit under Section 11 of CPC. No doubt the petitioners have raised a preliminary objection in their written statement in this regard but nothing in support of their argument has been placed before the Court. It is very strange to observe that almost entire record of the case has been annexed with this petition but the evidence of the petitioners has not been appended either intentionally or for any other purpose/reason best known to them.

13. From perusal of the record, we are unable to see any previous decision *qua* the suit property between the same parties. Mere alleging a specific plea cannot legally be considered as sufficient unless proved on the record. We have also noted that Petitioner No.1-Iftikhar Ali Abbasi had posed himself to be the special attorney of the legal heirs of Muhammad Shamim Khan in the suit titled as *Mst. Tayyaba Khurram and others* **vs.** *Province of Punjab* and filed a suit for declaration on their behalf, copy of which is Exhibit P-11 but Tayyaba Khurram herself appeared in the Court on 29.07.2016 and recorded her statement (Exh.P-13) that they have not given any power of attorney to Iftikhar Ali Abbasi (Petitioner No.1) and they also have no concern with the property of Dr. Amjad Pervez etc., the suit property. This fact alone would be sufficient to reflect the conduct of the petitioners. So the

argument of the learned counsel *qua res judicata* has no force at all.

14. Now comes the argument of the learned counsel regarding additional evidence under Rule 27 of Order XLI of the CPC. No doubt the petitioners had applied for additional evidence and the law on the subject is very much settled but it cannot be claimed as of right and it is for the Court to decide whether any document to be produced or any witness to be examined to enable the Court to pronounce the judgment or for any other substantial cause and also when the Court from whose decree the appeal is preferred has refused to admit such additional evidence and for allowing such evidence to be recorded, the Court has to record reasons for such permission. For ready reference, Order XLI, Rule 27 of the CPC is reproduced as under: -

> "**Order XLI, Rule 27 of the Code of Civil Procedure (CPC)** in India allows an appellate court to admit additional evidence in certain circumstances. This rule is an exception to the general principle that appeals should be decided solely on the evidence presented at the trial level. The appellate court can permit additional evidence if it deems it necessary to pronounce a fair judgment, if the trial court refused to admit evidence that should have been admitted, or for any other substantial cause."

15. The perusal of the record would reveal that the petitioners have failed to establish their nexus with the suit property except alleging an agreement to sell with legal heirs of Shamim Khan for which till date no suit for specific performance

has been filed by them. It will not be out of place to mention here that the suit property and property owned by the legal heirs of Shamim Khan though adjacent but two separate properties. The perusal of the application for additional evidence moved by the petitioners would reflect that no particulars and details of the documents to be produced as additional evidence has been given by them. Mere a vague application in this regard would not suffice the purpose of an application under Rule 27 *ibid.* No doubt, as per settled law, the appellate Court was duty bound to decide the said application for one way or the other but has failed to do so but in the peculiar circumstances of the instant case no fruitful purpose would be achieved by sending the case back to the appellate Court for decision of the application by setting aside all the judgments and decrees especially when the petitioners have bitterly failed to prove any nexus with the suit property and justify their unlawful possession. It would cause no prejudice to the petitioners and as such not following the settled law of the land would not be harmful for the petitioners.

16. For what has been discussed above, we are of the view that the instant petition is meritless, hence the same is dismissed and leave refused. The costs shall follow the event.

Islamabad
13.05.2025
APPROVED FOR REPORTING
Rabbani*/