REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. ..... OF 2022
(Arising out of S.L.P. (C) NO. 20718 OF 2021)

HINDUSTAN PETROLEUM CORPORATION LTD. ... Appellant (s)

Versus

AJAY BHATIA ... Respondent (s)

WITH

CIVIL APPEAL NO. .....OF 2022
(Arising out of S.L.P. (C) NO. 20737 OF 2021)

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. This appeal is against a final judgment and order dated 24th November 2021 passed by the High Court of Delhi dismissing the Execution First Appeals being Ex. F.A. 13 of 2019 and Ex. F.A. 30 of 2019 filed by the Appellant.

3. The Appellant is a Government Company within the meaning of Section 2(45) of the Companies Act, 2013 and carries on business, *inter alia*, of refining, distributing and marketing petroleum products all over India.

4. The Appellant operated two separate retail outlets/petrol pumps namely M/s Azadpur Service Station and M/s Tej Service Station, through two different dealers, at two different sites at Azadpur in Delhi. M/s Azadpur Service Station was located on a plot of land admeasuring 9700 sq. ft. at 4/4 Azadpur, G.T. Road, Delhi, hereinafter referred to as "Plot No. 4/4" and M/s Tej Service Station on two plots of land admeasuring 15336 sq. ft. located at 4/5, Azadpur, G.T. Road, Delhi hereinafter referred to as "Plot No.4/5".

5. By an indenture of lease dated 15th October 1970, Shadi Lal Bhatia, since deceased, son of Late Chaman Lal Bhatia, resident of 39, Security Police Flats, near Ashoka Hotel, New Delhi, leased out land situated at Mile 4/4, G.T. Karnal Road, Azadpur, Delhi more specifically described in the Schedule to the said indenture of lease, that is, Plot No.4/4 to M/s CALTEX (India) Ltd., hereinafter referred to as "CALTEX", for a period of ten years, to operate the retail outlet/petrol pump Azadpur Service Station. CALTEX has since merged with the Appellant, Hindustan Petroleum Corporation Limited. After the death of Shadi Lal Bhatia, Plot No. 4/4 was inherited by Mrs. Rajeshwari Devi, widow of the said Shadi Lal Bhatia. Mrs. Rajeshwari Devi extended the said lease for a period of ten years.

6. Plot No. 4/4 later devolved on the Respondent No, Shri Ajay Bhatia, son of Shri Anil Bhatia, who is the owner thereof. On or about 18th January 2001, the Respondent applied for mutation of Plot No. 4/4 being the site of the retail outlet/petrol pump known as M/s Azadpur Service Station.

7. By a letter No.3542/5 AG/2001 dated 20th January 2001, the Municipal Corporation of Delhi informed the Respondent that the property was being mutated in his name on the basis of documents furnished by him.

8. Plot No. 4/5 was initially let out to Standard Vacuum Oil Company which later became M/s ESSO Standard Eastern Inc, hereinafter referred to as "ESSO". By a deed of lease dated 9th February 1961, one Sahabzada Nasirddin Ahmed Khan, son of Nawabzada Mirza Bashiruddin Ahmed Khan, resident of H. No. 2205/VI, Qasamjan Street, Delhi, leased out 6,106 sq. ft. land fully described in the Schedule to the said deed of lease, that is, Plot No. 4/5 to Standard Vacuum Oil Company, predecessor in interest of ESSO. ESSO and/or its predecessor in interest Standard Vacuum Oil Company set up a retail outlet/petrol pump at plot No. 4/5 under the name and style of M/s Tej Service Station.

9. By a letter No. F21 (21)-68-L&B dated April 1969, the Delhi Administration, Land and Building Department informed the District Manager of ESSO that ESSO was in occupation of land measuring 958 sq. yards belonging to the Delhi Administration, and demanded rent

assessed at Rs.12,000/- per annum for the said land, for the period from 28th September 1968 to 27th September 1969. Delhi Administration agreed to execute a lease agreement thereafter.

10. The said lease in respect of Plot No.4/5 which had expired by efflux of time was extended for a further period of 10 years at a monthly rent of Rs.3,000/- for the period from 1st June 1988 to 31st May 1998 and Rs.4,500/- per month for the period from 1st June 1998 to 31st May 2008.

11. The Respondent filed a title suit being C.S. (OS) No.1828 of 2006 for recovery of possession of Plot 4/4 measuring 9700 sq. ft. situated at 4/4 Azadpur, G.T. Karnal Road, Delhi.

12. In the plaint, it is pleaded:

> "1. *That the Plaintiff is the owner and landlord of a piece of land measuring 9700 sq. ft. situated at 4/4 Azadpur G.T. Road, Delhi. Originally the said piece of land was owned by late Shri Shadi Lal Bhatia, S/o Shri Chaman Lal Bhatia, who has purchased the said plot of land. Late Shri Shadi Lal Bhatia was the grandfather of Plaintiff.*
>
> *...*
>
> *3. That originally the vacant piece of land measuring 9700 sq. yards situated at 4/4 Azadpur G.T. Road, Delhi was let out to M/s CALTEX (India) Ltd., which has since merged into Defendant No.1 wherein a retail outlet is being carried out in the name and style of M/s Tej Service Station. The said plot of land was let out by Late Shri Shadi Lal Bhatia by means of an indenture of lease dated 15th October 1970, which was duly registered with the Sub-Registrar dist. No.1, Delhi. The copy of the lease deed dated 15.10.1970 is annexed as Annexure P-1. The land let out has been shown in the site plan as red. A copy of the site plan is annexed with the plaint as Annexure P-2.*
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> *...*
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> *5. That Shri Shadi Lal Bhatia died and after his death his widow Smt. Rajeswari Bhatia inherited and estate and property was under the tenancy of Defendants Nos. 1 and 2.*

6. The Defendant No.1 and 2 started paying the rent of the land to Smt. Rajeswari Bhatia and the lease was further extended as per the terms and conditions of the indenture of lease dated 15.10.1970 referred to above.

...

9. That during the lifetime of Smt. Rajeswari Bhatia she had executed a will 5.6.89 and under the said Will the land in suit i.e. 4/4 Azadpur G.T. Road, Delhi fell to the share of the Plaintiff and the Plaintiff was also granted probate/letter of administration of the said Will and the land situated at 4/4 Azadpur G.T. Road, Delhi measuring 9700 sq. yds. fell to the exclusive share of the plaintiff and the Plaintiff has therefore, become the absolute owner of the said piece of land. It is pertinent to mention that even the adjoining land bearing No.4/5 Azadpur G.T. Road, Delhi fell to the share of the other legal representatives namely Shri Anil Bhatia, Smt. Renu Bhatia and Smt. Anuradha Kapoor, which is also under the unauthorised occupation of the Defendants No.1 and 2. The photocopy of the letter of probate issued in favour of the Plaintiff is also attached as Annexure P-3.

...

15. That the cause of action arose in favour of the Plaintiff and against the Defendants when the lease deed expired in June, 2003."

13. In the said suit, the Respondent prayed for the following relief:

"a) a decree for recovery of possession in respect of plot measuring 9,700. sq.ft. situated at 4/4 Azadpur, G.T. Road, Delhi as shown in red in the plan may be passed in favour of the Appellant and against the defendants as shown red in the plan attached.

b) the decree for recovery of Rs. 1965000/- being the damages @ Rs. 50000 per month from July 2003 to June 2006 be also passed in favor of Plaintiff and against the Defendants.

c) A decree for recovery of future mesne profits @Rs.50000/- per mensum from the institution of the suit till the realization be also passed.

d) The suit be decreed with costs.

e) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be passed in favor of the Plaintiff and against the Defendant."

14. From the averments in the plaint, it is patently clear that there were two plots of land, Plot No. 4/4 being the suit property which was inherited by the Respondent from his grandmother Smt. Rajeshwari Bhatia and Plot No. 4/5, an adjacent Plot, which fell in the share of other legal representatives of Smt. Rajeshwari Bhatia, namely, Shri Anil Bhatia, Smt. Renu Bhatia and Smt. Anuradha Kapoor. It is alleged that the said adjacent plot of land is also in the unauthorised occupation of the Appellant.

15. The existence of a cause of action and/or, in other words, the existence of circumstances giving cause for initiation of action is imperative for initiation of a suit. A suit can only be entertained when the cause of action has arisen and not otherwise. Any future event does not constitute cause of action. The cause of action is the fact or bundle of facts which would be necessary for the plaintiff to plead and prove, in order to get a judgment of the Court in his favour.

16. The cause of action for the suit, in this case, is pleaded in paragraphs 11, 12, 13 and 15 which are set out hereinbelow for convenience:-

> *"11. That the period of the lease has expired and after the expiry of the lease period the Plaintiff has been making repeated request to the Defendants to handover the vacant possession of the said piece of land. Instead of vacating the said plot the Defendants have been sending the rent cheques in favour of Plaintiff by means of courier. The Plaintiff has never accepted the said cheques and has only received the damages upto June, 2003.*
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> *12. After the expiry of the lease, the Defendants were liable to pay damages by way of mesne profits to the Plaintiff for being in unauthorized occupation of the piece of land since the tenancy had come to an end. That instead of making the payment of*

mesne profits the Defendants with some ulterior motive started sending the cheques @ Rs. 4500/- per month which was not accepted to the Plaintiff. That the tenancy of the Defendant was governed by English calendar. It started on the 1st day of month and it ends on the last day of the month. That the Defendants are liable to pay damages by way of mesne profits after the expiry of the lease i.e. from June 2003 @ Rs.50,000/- per month to the Plaintiff till they vacate the land.

13. That in order to avoid any technical objection the Plaintiff has also terminated the tenancy by serving a legal notice dated 31.01.06. The copy of the notice sent by the Plaintiff is annexed as Annexure P-4. That the defendants have failed to vacate the premises...

...

15. That the cause of action arose in favour of the Plaintiff and against the Defendants when the lease deed expired in June, 2003 and the Defendants were called upon to handover the vacant possession and also pay the arrears of damages @ Rs. 50000/- per month with effect from July 2003 upto date. The Defendants have also failed to deliver the possession the cause of action arose firstly in the month of July 2003 and in any case it has finally arisen when the period of one month expired after the service of the notice dated 31.01.2006 and is also continuing to arise till today as the Defendant has failed to do the needful. No reply notice was sent both under registered cover and UPC and the same has been duly served but of no effect."

17. In a nutshell, the cause of action is the expiry of the lease of the suit property, that is Plot No.4/4 and refusal of the Appellant to vacate the suit property in spite of request, and the consequential liability of the Appellant to the Respondent, to pay damages for wrongful occupation and/or mesne profits for wrongful occupation.

18. From the tenor and style of the plaint, it is absolutely clear that the suit was filed only in respect of Plot No.4/4, initially let out to CALTEX, which had merged into Appellant and where a retail outlet was being operated under the name and style of M/s Azadpur Service Station. The suit property did not include Plot No. 4/5 which belongs to

other legal representatives of Smt. Rajeshwari Bhatia. The owners of Plot No. 4/5 had not even joined as Plaintiffs in the suit. The plaint proceeds on the basis of a lease executed in favour of CALTEX predecessor in interest of the Appellant, which according to the plaintiff, had expired in June 2003.

19. Soon after the trial of the suit commenced, the Respondent filed an application in the suit under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking a summary judgment and order/decree for eviction of the Appellant from the suit property.

20. By a judgment and decree of the Delhi High Court in C.S.(O.S.) No. 1828 of 2006 dated 21st November 2013, the Appellant was directed to restore the suit property to the Respondent within a period of 12 weeks from the date of the order.

21. The relevant excerpts from the judgment and decree dated 21st November 2013 are set out hereinbelow:-

> *"**4**. Admittedly, the suit property was given on lease to the erstwhile M/s. CALTEX (India) Limited and has been duly exhibited as Ex.P-1. Defendant No.1 is the successor of M/s CALTEX (India) Limited and accepted the relationship of landlord and tenant vis-à-vis the Plaintiff and itself. The land in question was owned by the Plaintiff's grandfather, Mr. Shadi Lal Bhatia and after his death Smt. Rajeshwari Bhatia became the landlady. The lease was extended by a lease deed dated 15th October 1970. Smt. Bhatia died on 22nd November 1993. During her lifetime she executed a Will dated 5th June 1989 bequeathing the land in question to the Plaintiff. The Plaintiff has also obtained probate/letter of administration of the said Will. This fact was also admitted by the Defendant in its written statement. The probate certificate has been placed on record. Defendant No.1 started remitting the rent to the Plaintiff separately through his attorney Mr. Vipin Arora.* ***The rent in respect of adjoining land was being paid by***

Defendant No.1 separately to the other legal heirs of the deceased Smt. Rajeshwari Bhatia.

5. Considering that Defendant No.1 has accepted the relationship of landlord and tenant and has been paying rent for the plot under its occupation to the Plaintiff, it is now not open to Defendant No.1 to deny the identity of plot which belongs to the Plaintiff.

6. In the Written Statement, Defendant No.1 claims that the lease is renewable for a period of 40 years beyond 31st March 2009. It appears that there is no automatic renewal of the lease. Defendant No.1 has not exercised any such right by issuing a notice to the Plaintiff. On the other hand, the Plaintiff has terminated the lease and filed the present suit for recovery of possession.

7. The Supreme Court has, in Bharat Petroleum Corporation Limited v. Rama Chandrashekhar Vaidya [decision dated 2nd April 2013 in SLP (Civil) No.15 of 2010], negative the plea taken in that case by Defendant No.1 that there is an automatic renewal of the lease. Similarly, the Supreme Court has, in Depot Superintendent, H.P. Corporation Limited v. Kolhapur Agricultural Market Committee, Kolhapur (2007) 6 SCC 159, held that there is no automatic renewal of a lease for a petroleum retail outlet. Consequently, the statement made in para 9 of the written statement that the lease came to an end on 31st March 2009 is an admission by Defendant No.1 that its continuance in the suit property beyond that date is without any legal basis.

8. Consequently, the Plaintiff is entitled, under Order XII Rule 6 CPC, to a decree of possession on the basis of the above admission made in the written statement of Defendant No.1.

9. The suit is decreed in terms of prayer (a) and the Defendant No.1 is directed to restore to the Plaintiff the vacant and peaceful possession of the suit property as shown in red in the plan enclosed with the plaint, which is under occupation of Defendant No.1, within a period of twelve weeks from today."

22. The Respondent (plaintiff in the suit) was claiming mesne profits at the rate of Rs.50,000/- per month from July 2003 in respect of 9,700 sq. ft. of land being Plot No.4/4. The Court proceeded to decide the issue of "*Whether the plaintiff was entitled to mesne profits from the*

defendants and if so to what extent?". Trial commenced in respect of the claim of the Plaintiff (Respondent) for mesne profits. The Court found that the lease of Plot No. 4/4, came to an end, by efflux of time in June 2003. On examination of an approved valuer, the Respondent was granted mesne profit at the rate of Rs.50,000/- per month with effect from July 2003 till the vacation of the suit property, by a judgment and order and decree dated 20th August 2018.

23. The Appellant filed Regular First Appeal being RFA No. 13 of 2019 in the High Court of Delhi. By a judgment and order dated 9th January 2019, the Delhi High Court found that the tenancy of the Appellant in respect of the suit property, stood terminated after the Respondent sent the legal notice dated 31st January 2006 terminating the tenancy of the Appellant with effect from 28th February 2006. The Appellant's occupation thus became illegal only from 1st March 2006 and not from any earlier period.

24. The High Court partially allowed the Regular First Appeal being RFA No.13 of 2019 and modified the impugned judgment and decree by holding that mesne profits would be payable not from July 2003 but from 1st March 2006.

25. The Respondent filed an application in the Court of Additional District Judge, North Rohini Court, Delhi for execution of the decree of mesne profits as modified by the High Court.

26. The Appellant contends that the Respondent had filed an inaccurate site plan along with its plaint, based on which judgment and decree dated 21st November 2013 has been passed. There was, thus, an error apparent on the face of the said judgment and decree. The Appellant, therefore, filed an application on or about 1st May 2015, under Order 41 Rule 33 read with Section 151 of the CPC for clarification/rectification of the decree dated 21st November 2013. The said application was dismissed by an order dated 15th May 2015 on the ground of the same being barred by limitation.

27. Since the Respondent had wrongfully taken possession of Plot No. 4/5 or part thereof, the dealer of the petrol pump/retail outlet, M/s Tej Service Station filed an application under Order 21 Rule 99 read with Section 151 of the CPC seeking appointment of a Local Commissioner to demarcate the area of the suit property.

28. Pursuant to an order dated 21st March 2013 passed by a Joint Registrar of the High Court, the Execution Petition being Ex. P. No. 163 of 2014 was transferred to the Court of the Additional District and Sessions Judge, North District, Rohini Court, Delhi and the parties were directed to appear before the Rohini Court on 2nd May 2017. On 22nd July 2017, the Appellant filed an application before the Additional District Judge, North District, Rohini Court, Delhi for addition of the Land and Building Department of the Delhi Administration as party Respondent in the Execution Petition.

29. On or about 25th July 2017, the Appellant filed another application before the Additional District Judge, North District, Rohini Court, Delhi, praying for appointment of a Revenue Officer, preferably Kanoongo of the concerned area as a Local Commissioner with a direction on him to demarcate the area of the suit property. Directions were also sought to ensure that the attachment done under the process of execution of the decree on Plot No. 4/5 where the Appellant had been running the petrol-pump/retail outlet, M/s Tej Service Station, be removed and the said plot be restored to the Appellant.

30. The Managing Partner of M/s Tej Service Station, Shri Ramesh Kumar Yadav, made an application for intervention being IA No. 39324 of 2022 in this Court. Pursuant to an order dated 15th March 2022 passed in the said application, the intervener, being the Managing Partner of M/s. Tej Service Station has been added as party-Respondent in the Special Leave Petition.

31. By judgment and order dated 9th January 2019, the said Regular First Appeal No. 13 of 2019 filed by the Appellant was partly allowed and the judgment and decree dated 20th August 2018 for mesne profits was modified by directing that mesne profits would be payable from 1st March 2006 and not from July 2003 as directed by the Trial Court.

32. By an order dated 15th March 2019, the Additional District Judge, North District, Rohini Court, allowed Execution Application No. 799 of 2014 filed by the Respondent for possession of the suit premises and

dismissed the subsequent applications filed by the Appellant, that is, the application for dismissal of the execution application on the ground of the decree not being executable and the application seeking restoration of possession of Plot No. 4/5, possession whereof had been taken in part execution of the decree.

33. On or about 29th March 2019, the Appellant filed Execution First Appeal No. 13 of 2019 challenging the order dated 15th March 2019 in the Delhi High Court. On 19th July 2019, the Appellant filed its objections as well as the application under Order 21 Rule 26 CPC for stay of the proceedings for execution of the decree for mesne profits. The applications were dismissed by a judgment and order dated 19th July 2019.

34. Being aggrieved, the Appellant filed Execution First Appeal 30 of 2019. Various interim orders were, from time to time, passed. Ultimately, by an order dated 24th November 2021 impugned in this appeal, the High Court of Delhi dismissed Execution First Appeal No. 13 of 2019 and Execution First Appeal No. 30 of 2019 filed by the Appellant.

35. Mr. Vishwanathan, learned counsel appearing on behalf of the Appellant submitted that the suit had been filed for recovery of Plot No.4/4 admeasuring 9700 sq. ft. The suit was decreed in terms of prayer (a) of the plaint. Prayer (a) of the plaint specifically refers to property situated at 4/4, Azadpur, G.T. Road, Delhi admeasuring 9700

sq. ft. The Appellant was all along willing to comply with the decree and hand over possession of Plot No. 4/4 to the Respondent.

36. Mr. Vishwanathan further argued that the Executing Court was required to ascertain the exact description of the decretal property, that is, Plot No. 4/4, Azadpur, G.T. Road, Delhi in terms of Order 7 Rule 3 and Order 20 Rule 3 of the CPC for the purposes of execution, discharge or satisfaction of decree within the meaning of Section 47 CPC by appointing a Kanoongo of the concerned area as a local Commissioner as per the law laid down by this Court in ***Pratibha Singh v. Shanti Devi Prasad***[1].

37. Mr. Vishwanathan argued that the Decree Holder (Respondent) was claiming possession of Plot No.4/5 by relying upon a handmade plan annexed to the plaint. The suit property was not identified by boundaries. The handmade map which does not identify Plot No. 4/4 being the suit property, cannot be the basis for identification of the plot.

38. Mr. Vishwanathan submitted that the Respondent was wrongfully claiming possession of Plot No.4/5 of which he was not even owner. Part of the Plot is owned by Mr. Anil Bhatia and the others and the other part by the Delhi Government.

39. In respect of SLP (C) No. 20737 of 2021, Mr. Vishwanathan submitted that the Appellant had paid mesne profit as determined by the Court till 30th September 2014. The Appellant had all along

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1 (2003) 2 SCC 330

indicated its willingness to handover possession of plot No. 4/4. The decree dated 20th August 2018 for payment of mesne profit also referred to Plot No.4/4 admeasuring 9700 sq. ft. The Appellant contends that the Appellant is, therefore, not liable to pay mesne profit post September, 2014.

40. The Appellant contended:

> *"11. The Decree Holder had the chance of executing the decree of possession against 4/4 Azadpur, Delhi, willingly he did not do so and instead took possession of wrong property i.e. 4/5, causing loss to judgment debtor and thus his entitlement to mesne profits does not survive.*
>
> *...*
>
> *13. Further, it is submitted that the Decree Holder has taken the possession of land admeasuring 116* 61 from the judgment Debtor on 15.09.2014, hence the calculation for mesne profit for complete area of 9700 sq. ft. after 15.09.2014 is flawed and unlawful. The copy of the report of the bailiff is annexed herewith...."*

41. Mr. Viswanathan argued that the Respondent has claimed mesne profits for entire decretal area of 9700 sq. ft. after 15th September 2014. The Respondent Decree Holder cannot claim the entire amount when he has taken part possession of land admeasuring 7076 sq. ft. out of which 240 sq. ft. area belong to the Land and Building Department, Delhi Administration.

42. On behalf of Respondent, Mr. Kalra submitted that the decree of possession obtained by the Respondent had assumed finality. The execution proceedings were initiated for recovery of possession. The Respondent could take possession of 7075 sq. ft. out of the 9700 sq. ft.

on 15th September 2014. The Appellant was directed to remove the dispensing units, underground tanks, CNG compressor, overhead tanks, which the Appellant has not yet done. The land cannot be used by the Respondent as there are explosives stored and the sale of fuel is still going on.

43. Mr. Kalra emphasised on the fact that there was a site plan attached to the plaint which is part of the decree and the decree has been confirmed by the Appellate Court. Mr. Kalra also argued that 4/4 and 4/5 are only landmarks as found by the Courts below and no substantial question of law is involved. The appeals are thus liable to be rejected.

44. With the greatest of respect, there is no finding by any Court that 4/4 or 4/5 are only landmarks. Rather, there is a plethora of documents on record to show that two separate petrol pumps/retail outlets were being run on two contiguous plots, one of which was initially run by CALTEX, which later merged into the Appellant and the other by ESSO, which later merged into the Appellant. There was no connection between CALTEX and ESSO. It is also admitted that one of the plots have gone to the share of some other descendants of the original owner, Shadi Lal Bhatia.

45. It is clear that the decree is not executable against Plot No. 4/5. The Respondent is liable to restore the possession of Plot No.4/5 to the Appellant. The Executing Court would have to appoint a Local

Commissioner to demarcate and hand over Plot No.4/4 to the Respondent.

46. It is not necessary for this Court to embark upon a threadbare analysis and discussion of the lengthy judgment of the High Court, in appeal before us. Suffice it to mention that the suit was in respect of Plot No. 4/4. The mesne profits and/or damages were awarded in respect of wrongful occupation of Plot No. 4/4.

47. There can be no doubt that the verdict of the Trial Court has assumed finality in respect of Plot No. 4/4. The Respondent is entitled to possession of Plot No. 4/4. The Respondent is also entitled to mesne profits at the rate of Rs.50,000/- per month from 1st March 2006, as directed by the High Court to make over, till the date on which the Appellant offered possession of Plot No. 4/4 to the Respondent.

48. The question is whether the Respondent can take possession of any part of Plot No. 4/5 or any other plot in execution of the decree in suit being C.S.(O.S.) No.1828 of 2006 which is only in respect of Plot No. 4/4. The answer to the aforesaid question is obviously in the negative.

49. Order 7 Rule 3 of the Code of Civil Procedure mandates that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case such property can be identified by boundaries or numbers in a record of

settlement or survey, the plaint shall specify such boundaries or numbers.

50. In ***Pratibha Singh*** (supra), this Court held that when a suit for immovable property had been decreed but the property not definitely identified, the defect in the Court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 could be cured. The Court which passed the decree could **supply the omission.** Alternatively, exact description of the decretal property might be ascertained by the Executing Court, as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47.

51. There could be no doubt that a decree should not to the extent practicable be allowed to be defeated. At the same time, a decree can only be executed in respect of the suit property if the suit property is easily identifiable. The extent of the suit property would have to be determined by the Executing Court, as a question relating to execution, discharge or satisfaction of the decree.

52. The Respondent is undoubtedly entitled to mesne profits. Order 20 Rule 12 provides:-

> *"**12. Decree for possession and mesne profits:-***
>
> *(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-*
>
> *(a) for the possession of the property;*

(b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to mesne profits;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry."

53. The mesne profit at the rate directed by the Trial Court and confirmed by the High Court will have to be computed afresh, taking into account all relevant factors.

54. The contention of the Intervener that M/s Tej Service Station is located over two adjacent plots, Plot No.4/5 admeasuring 112x60 sq. ft. being part of Khasra No. 403/90 leased by Smt. Rajeshwari Bhatia and another plot admeasuring 142x60 sq. ft. being part of Khasra No. 66 of Village Azadpur belonging to the Delhi Government requires consideration.

55. This Court cannot shut its eyes to the fact that part of the land belongs to the Delhi Government for which Appellant is paying Revenue to the Delhi Government.

56. The Appeal relating to the SLP (C) No.20718 of 2021 and the Appeal relating to SLP (C) No.20737 of 2021 are allowed. The impugned judgment and order is set aside. The Executing Court shall decide the Execution Applications and all related applications afresh, in the light of the observations made above by appointing a Revenue Officer as Local Commissioner to demarcate Plot No. 4/4 and make over possession of the said plot to the Respondent. Any excess land of which possession may have been taken, whether of Plot No.4/5 or any land belonging to the Delhi Government shall be restored to the Appellant. The mesne profits as directed by the Trial Court shall be computed in terms of the decree of the Trial Court, as modified by the High Court, i.e., with effect from 1st March 2006 till relinquishment by the Appellant of possession of the suit property.

.....J
[INDIRA BANERJEE]

.....J
[A.S. BOPANNA]

NEW DELHI;
SEPTEMBER 22, 2022