

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.397 of 2007

Order with signature of Judge

For Final Argument (As per Court's order dated 19.11.2013)

28.02.2014.

Plaintiff No.2 Hafeez Ahmed present in person.
Mr. Khalid Daudpota, Advocate for the Defendant.

This is a suit for recovery of damages, compensation, mesne profits amounting to Rs.13,96,00,000/- filed by the Plaintiff against the Defendant. The Plaintiff No.2 present in court admits that the Defendant is tenant and several rent cases have been instituted against the tenant and they are still in the High Court of Sindh contesting constitution petition on account of dismissal of their rent case against the Defendant. I have myself examined the plaint and directed the Plaintiff No.2 to point out from the pleading in the plaint that where he has claimed recovery of possession of any piece of land from the Defendant to claim that possession of that area of piece of land with the Defendant was illegal. Since Plaintiff himself has not disclosed the actual property according to him in illegal possession of the Defendant, he cannot establish the mesne profits to the tune of Rs.13,96,00,000/-. The basic ingredients of mesne profits i.e illegal possession and claim of recovery of possession is missing from the plaint.

The Plaintiff No.2 has conceded before this Court that once constitution petition arising out of rent proceeding is decided in his favour the entire area in possession of the Defendant shall be vacated by him. He also admits that the Defendant is depositing rent under MRC.

He says that the amount of rent so deposited is less. Unfortunately that may be correct position that he is not depositing proper rent but the remedy for such grievance is available for enhancement of rent under the rent laws. Mesne profits cannot be claimed on the ground that the rent has not been paid at the market rate by the Defendant to the Plaintiff. In the circumstances, when the Plaintiff admits Defendant is tenant and he is pressing lawful remedy available to him, no case for mesne profit is made out, suit is dismissed as it has no merit.

JUDGE

SM