

Court No. - 1

Case :- MATTERS UNDER ARTICLE 227 No. - 5126 of 2022

Petitioner :- Rajendra Singh

Respondent :- Sheeshpal And 8 Others

Counsel for Petitioner :- Kumar Dhananjay

Counsel for Respondent :- Kapil Kumar Pandey, Virendra Singh

Hon'ble Jayant Banerji, J.

1. Heard Shri Kumar Dhananjay, learned counsel for the petitioner and Shri Virendra Singh alongwith Shri K.K. Pandey, learned counsel appearing for the respondents.

2. The relief sought for in this petition is for setting aside an order dated 23.5.2022 passed by the District Judge, Ghaziabad in Civil Appeal No. 14 of 2022 (Shishpal & Ors. vs. Rajendra Singh) whereby the appeal was held to be maintainable in view of the judgment of the Supreme Court in **H.P. Vedavyasachar v. Shivshankara and Anr.**)¹ and the appeal was admitted. A further direction was passed by the District Judge for maintenance of status quo on that date with regard to the disputed property till the next date of hearing.

3. The contention of learned counsel for the petitioner is that Original Suit No.2114 of 2012 (Rajendra Singh vs. Shishpal & Ors.) was filed in the court of Civil Judge (Senior Division), Ghaziabad under Section 6 of the Specific Relief Act, 1963. It is stated that the suit being under Section 6 of the Specific Relief Act, a summary procedure was required to be followed by the court, but the trial court had dismissed the suit of the plaintiff-petitioner on 31.08.2018 after framing five issues and adjudicating each of them.

¹ (2009) 8 SCC 231

4. It is stated that thereafter, challenging the judgment and decree dated 31.08.2018, the petitioner filed a petition in this Court, being Matters under Article 227 No.7688 of 2018, which came to be dismissed by a judgment and order dated 26.10.2018 with the observation that against the judgment aforesaid of the trial court, there existed a limited scope of revision that can be filed under Section 115 of the CPC and otherwise a regular suit is also maintainable. It is stated that pursuant to the aforesaid judgment of this Court, Civil Revision No.77 of 2018 was filed before the District Judge, Ghaziabad by the petitioner, which came to be allowed by means of a judgment and order dated 17.5.2019. The judgment and decree made in the Original Suit No.2114 of 2012 was set aside and the matter was remitted to the trial court with a request to frame only one issue whether the plaintiff was in possession of the disputed property and whether he had been illegally dispossessed therefrom within six months prior to the filing of the suit and after hearing the parties to pass a fresh judgment.

5. It is stated that by means of a judgment and order dated 20.4.2022 in Original Suit No.2114 of 2012, the suit of the plaintiff-petitioner was allowed with cost. The trial court directed the defendants to remove their possession from the suit property and to give possession to the plaintiff. It was observed that on failure to do so, the plaintiff would have the right to get the defendants evicted and take possession thereof through the court bailiff. It was also directed that after giving possession to the plaintiff, the defendants would not interfere in his possession.

6. Challenging the decree made pursuant to the aforesaid judgment and order dated 20.4.2022, Civil Appeal No.14 of 2022 was filed in the court of the District Judge, Ghaziabad by the defendants. In that civil appeal, an application, which appears to be paper no. 13-A1, was filed by the plaintiff, objecting the admission of the appeal. By the impugned order dated 23.5.2022, the District Judge, Ghaziabad held the appeal to be

maintainable in view of the aforesaid judgment of the Supreme Court in **H.P. Vedavyasachar**.

7. It is the contention of the learned counsel for the petitioner that earlier, this Court in Matters under Article 227 No.7688 of 2018 had observed that remedy under Article 227 of the Constitution would not be available inasmuch as there is a limited scope of revision available under Section 115 of the CPC. It is contended that the observation made by this Court was grounded on the premise that the suit is one under Section 6 of the Specific Relief Act. It is contended that sub-section (3) of Section 6 of the Specific Relief Act bars filing of any appeal from any order or decree passed in any suit instituted under Section 6, and that no review of the order or decree is allowed. It is contended that the only remedy available for the defendants after the judgment and order of the trial court dated 20.4.2022 in the Original Suit, is to file a fresh suit before a competent court to establish their title over the suit property and to recover possession thereof. In support of his contention, learned counsel has relied upon a judgment of the Supreme Court in **I.T.C. Ltd. vs. Adarsh Cooperative Housing Society Ltd.**² and has drawn particular attention of the Court to the observations made in paragraph 6 of the judgment, in which paragraph 4 of the another judgment of the Supreme Court in **Sanjay Kumar Pandey & Ors. vs. Gulabhar Sheikh & Ors.**³ has been quoted.

8. Learned counsel for the respondents have strongly opposed the petition on the ground that the judgment of the Supreme Court in the matter of **H.P. Vedavyasachar** (supra), that has been relied upon by the District Judge while admitting the appeal, reflects that in that case before the Supreme Court, it was noticed that the appellant had not only prayed for grant of a decree for permanent injunction but had also sought a decree for mandatory injunction directing the respondents to hand over possession to it. The Supreme Court had observed that such prayers

² (2013) 10 SCC 169

³ (2004) 4 SCC 664

would not come within the purview of Section 6 of the Specific Relief Act. It is contended that the suit from which this petition arises was filed by the petitioner seeking mandatory injunction and by the order of the trial court dated 20.4.2022, the suit was decreed and additionally the permanent injunction was also granted.

9. A certified copy of the plaint is on record, on perusal of the relief clause of which, it is evident that mandatory injunction was sought with regard to the suit property for removal of constructions made thereon and for handing over possession and title, as existed earlier. A further relief of permanent injunction was also sought restraining the defendants from making any illegal constructions and from damaging any part of the property, or interfering therein or from executing any sale-deed in favour of the third parties. The relief, as sought for, certainly does not fall within the ambit of a suit under Section 6 of the Specific Relief Act. Rather, it would be a suit under the provisions of Sections 38 and 39 of the Specific Relief Act. The observation of the Supreme Court in **H.P. Vedavyasachar** (supra) is as follows.

“6. So far as the contention of the learned counsel for the appellant that the suit was instituted in terms of Section 6 of the Specific Relief Act, 1963 is concerned, in our opinion, the same cannot be accepted. Appellant has not only prayed for grant of a decree for permanent injunction but has also asked for passing a decree for mandatory injunction directing the respondents to handover possession to it. Such prayers, in our opinion, would not come within the purview of Section 6 of the Specific Relief Act.”

10. Under the circumstances, as held by the Supreme Court in **H.P. Vedavyasachar** (supra), the suit of the plaintiff-petitioner would not fall within the purview of Section 6 of the Specific Relief Act. As far as the judgment of this Court in Matters under Article 227 No.7688 of 2018 is concerned, a perusal of the same reflects that after considering the submissions as were urged by the learned counsel for the petitioner, a finding was returned with regard to the maintainability of the petition

under Article 227 of the Constitution of India. The judgment of **H.P. Vedavyasachar** (supra) was not placed before this Court for its consideration. Therefore, merely because this Court in a previous proceeding had declined to interfere under Article 227 of the Constitution and had dismissed the petition, that would not enure to the benefit of the petitioner.

11. The judgment in the case of **I.T.C. Ltd.**, as cited, is of no assistance to the petitioner as the facts of the present case are different.

12. In view of the aforesaid, the order dated 23.05.2022 passed by the District Judge, Ghaziabad in Civil Appeal No.14 of 2022 requires no interference.

13. This petition is, accordingly, **dismissed**.

14. The Registrar (Compliance) is directed to send a copy of this order to the concerned court within fifteen days, for information.

Order Date :- 14.12.2023
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(Jayant Banerji, J)