

GAHC040006872023

2024:GAU-AP:1059



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : FAO/3/2023

Oteng Jongkey and 4 Ors.
Son of Sri Oteng Jongkey,
Resident of Village Karko, Jengging Circle, District Upper Siang, Arunachal Pradesh

2: Dr. Bijoy Jongkey
Age:
Occupation :
Son of Sri Oteng Jongkey

.
Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

3: Kaling Jongkey
Age:
Occupation :
Son of Sri Oteng Jongkey

.
Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

4: Bitom Jongkey
Age:
Occupation :
Son of Sri Oteng Jongkey

.
Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

5: Bini Jongkey
Age:
Occupation :
Son of Sri Oteng Jongkey

.
Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh

VERSUS

Oni Alee and Anr.
Son of Late Jajang Alee,
Resident of Village Karko, Jengging Circle, District Upper Siang, Arunachal Pradesh.

2: Yago Pangkam
Age: 0
Occupation :
Ex Wife of Sri Oni Alee

Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh

Advocate for the Petitioner : Bedanta Kaushik, 1 P Borah, Tapi Omo

Advocate for the Respondent : Chorpok Modi, Uttam Deka, A Saring, N Tania, K Gara, Bomyom Ori, M Tunar, Maji Dui, Tame Rimi, Nabam Chatum

Linked Case : IA(C)/91/2023

Oteng Jongkey and 4 Ors.
Age: 74
Occupation :
Address: Son of Sri Oteng Jongkey
. Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.
2: Dr. Bijoy Jongkey
Age: 48

Occupation :
Address:Son of Sri Oteng Jongkey
. Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

3: Kaling Jongkey
Age: 43
Occupation :
Address:Son of Sri Oteng Jongkey
. Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

4: Bitom Jongkey
Age: 37
Occupation :
Address:Son of Sri Oteng Jongkey
. Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.

5: Bini Jongkey
Age: 33
Occupation :
Address:Son of Sri Oteng Jongkey
. Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.
VERSUS

Oni Alee and Anr.
Age: 0
Occupation :
Address:Son of Late Jajang Alee
Resident of Village Karko
Jengging Circle
District Upper Siang
Arunachal Pradesh.
2:Yago Pangkam
Age: 0
Occupation :
Address:Ex Wife of Sri Oni Alee
Resident of Village Karko

Jengging Circle
District Upper Siang
Arunachal Pradesh.

Advocate for : Bedanta Kaushik
Advocate for : appearing for Oni Alee and Anr.: Advocate , appearing for 2,
respectively.

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 14.03.2024

Date of Judgment & order: 29.11.2024

JUDGMENT & ORDER (CAV)

Heard Mr. Bedanta Kaushik, learned counsel, appearing on behalf of the petitioners. Also heard Mr. Amit Saring, learned counsel, appearing on behalf of the respondents.

2. The present appeal has been so instituted by the appellants, against an order, dated 19.05.2023, passed by the learned Civil Judge(Senior Division), East Siang District, Pasighat, in Misc. Case No. 56/2022(in Title Suit No. 27/2022), rejecting the prayer for injunction so made by the appellants, herein.

3. The brief facts requisite for the purpose of adjudication of the issues arising in the present proceeding, is noted as under:

The predecessor-in-interest of the appellants Late Sisi Jongkey, who was the wife of the appellant No. 1, herein, and mother of appellants No. 2 to 5, was projected to have been occupying a plot of land measuring 2500

sq. mtrs. in the District of Upper Siang, Arunachal Pradesh, since the year 1980. Late Sisi Jongkey had approached the State Respondents in the year 1988, praying for allotment of land measuring 2000 sq. mtrs.. It is contended that out of the said land under occupation of the Late Sisi Jongkey, a plot of land measuring 400 sq. mtrs., was approved by the then Circle Officer, Jengging, and forwarded to the concerned authority for necessary action. However, the land, in question, was not allotted to Late Sisi Jongkey. The predecessor-in-interest, Late Sisi Jongkey expired on 08.10.2013 and it is contended that the appellants, accordingly, inherited the possession of 2000 sq. mtrs. of the plot of land and had applied for substitution of their names in place of their predecessor-in-interest.

It is further contended that certain persons were trying to encroach upon the land so possessed by the appellants, herein, and for the said act; the Extra Assistant Commissioner, Jengging, vide letter, dated 26.05.2022, had directed the respondent No. 2, herein, to stop all types of construction activities over the land possessed by the appellants, herein, and further, she was directed to show reasons as to why legal action should not be taken against her. It was also contended that Kebang was also held by the jurisdictional village authority in the matter. However, nothing emanated therefrom.

It is also contended that on 06.11.2022, the respondent No. 2, in association with the respondent No. 1, illegally encroached upon a portion of the land possessed by the appellants, herein, and dispossessed the appellants, herein, from about 130 sq. mtrs. by constructing a thatched house. The appellants No. 2 to 5, lodged an First Information Report(FIR)

on 07.11.2022, before the Jengging Police Station, *inter alia*, stating therein, about their illegal dispossession and construction activities carried-out on the said plot of land by the respondents, herein.

Being aggrieved by the dispossession, the appellants, herein, as plaintiffs, instituted Title Suit No. 27/2022, before the Court of learned Civil Judge(Senior Division), East Siang District, Pasighat, under the provisions of Section 6 of the Specific Relief Act, 1963, and sought for a declaration that the appellants, herein, were the rightful and lawful possessors of Schedule A and B of the plot of land, in question, and were dispossessed by the respondents, herein.

The appellants, herein, also prayed for recovery of the possession of Schedule B property in terms of the provisions of Section 6 of the Specific Relief Act, 1963, by evicting the respondents, herein, therefrom. The appellants, herein, also prayed for a permanent injunction restraining the respondents from disturbing the peaceful possession of the appellants over the balance portion of land measuring 1870 sq. mtrs., more specifically, described in Schedule A of the plaint. Along with the said application, the appellants, herein, also instituted Misc.(J) Case No. 56/2022 under the provisions of Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908, praying for grant of temporary injunction.

The learned trial Court while issuing notice to the respondents, herein, in Misc.(J) Case No. 56/2022, vide order, dated 06.12.2022, was pleased to direct the parties to maintain status quo over Schedule A and B of the plaint, till the next date of listing with further direction that no fresh

construction shall be carried-out by both the parties, till further orders from the Court. The respondents, herein, entered appearance in Title Suit No. 27/2022 by way of filing their written statement. A violation of the ad interim directions passed by the learned trial Court having occasioned; the appellants, herein, instituted I.A. No. 06/2023, under the provisions of Order XXXIX Rule 2(a) of the Code of Civil Procedure, 1908, for passing of necessary orders against the respondents, herein, for violation of the status quo order, dated 06.12.2022, passed by the learned trial Court.

The learned trial Court proceeded to take-up the said I.A. No. 06/2023 for consideration and noticing therein that the disputed plot of land were actually government land and the jurisdictional Extra Assistant Commissioner had instituted proceedings under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, proceeded to draw a conclusion that the provisions of the said Act of 2003, bars a civil Court from entertaining any proceeding and accordingly, the Court being so barred, it was held that no interim relief of temporary injunction could be granted to the appellants, herein. Having drawn the said conclusion, the ad interim directions passed by the learned trial Court vide order, dated 06.12.2022, in Misc.(J) Case No. 56/2022, came to be vacated and the I.A. No. 06/2023 and Misc.(J) Case No. 56/2022, came to be disposed of.

It is also to be noted that the learned trial Court in the said suit had framed a preliminary issue regarding the bar of jurisdiction of the learned trial Court as under:

“Whether the present suit is barred under Section 19 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003?”

4. Being aggrieved, the appellants, herein, have instituted the present proceeding before this Court.

5. Mr. Kaushik, learned counsel for the appellants, has, at the outset, submitted that the learned trial Court had misconstrued the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, and had drawn conclusions in the matter, without first, appreciating the nature of the suit as instituted by the appellants, herein, before the learned trial Court. The learned counsel has also submitted that Title Suit No. 27/2022 was so instituted by invoking the provisions of Section 6 of the Specific Relief Act, 1963, claiming that the appellants, herein, through their predecessor-in-interest, Late Sisi Jongkey, had been peacefully possessing the Schedule A land since the year 1980 and applications for allotment of the said plot of land under their possession was already pending consideration before the competent authority.

6. Mr. Kaushik, learned counsel, has further contended that the appellants, herein, were dispossessed from a plot of land measuring 130 sq. mtrs., out of the total land under their possession which was described in Schedule B of the suit, on 06.11.2022. Accordingly, the appellants, herein, being illegally dispossessed of their possession by the respondents, herein, a cause of action having arisen, the appellants, herein, had instituted the Title Suit No. 27/2022. The learned counsel has further submitted that scope of Section 6 of the Specific Relief Act, 1963, is limited

to the recovery of possession without determining the title and the same would be so maintainable in the event, a person in possession, is dispossessed from his immovable property without his consent and without following the due procedure of law. The learned counsel has accordingly, submitted that the cause of action for institution of the suit, in question, having occasioned on 06.11.2022, the suit was admittedly so instituted within a period of 6(six) months as mandated under the provisions of Section 6 of the Specific Relief Act, 1963.

7. Mr. Kaushik, learned counsel, by taking this Court through the order, dated 19.05.2023, has submitted that the learned trial Court had misconstrued the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, and by drawing a presumption that the suit as preferred by the appellants, herein, was, in fact, a suit preferred against an action initiated by the competent authority under the provisions of the said Act of 2003, erred in holding that the said Act of 2003 having barred the civil Court from entertaining any proceeding against any action initiated under the provisions of the said Act of 2003; no interim relief for temporary injunction could be granted in the matter in favour of the appellants, herein.

8. Mr. Kaushik, learned counsel, has submitted that the suit, in question, was not so initiated against any action on the part of the government authorities so taken under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, but, was a suit so instituted for recovery of possession from the respondents, herein, who had dispossessed the appellants, herein, from the plot of land, hitherto

before under their possession, on 06.11.2022. The learned counsel has accordingly, submitted that in the facts and circumstances involved; it is only the remedy available under Section 6 of the Specific Relief Act, 1963, that is available to the appellants, herein, and the civil Court has the jurisdiction to try such suit under Section 6 of the Specific Relief Act, 1963, as per Section 9 of the Code of Civil Procedure, 1908, and accordingly, the institution of Title Suit No. 27/2022, for recovery of possession in view of the illegal dispossession of the appellants, herein, was proper.

9. In support of his contentions, Mr. Kaushik, learned counsel for the appellants, herein, has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of **Lallu Yeshwant Singh v. Rao Jagdish Singh**, reported in **AIR 1968 SC 620**; **Mohd. Mehtab Khan & ors. v. Khushnuma Ibrahim Khan & ors.**, reported in **(2003) 9 SCC 221**; and **ITC Ltd. v. Adarsh Cooperative Housing Society Ltd. (2013)**, reported in **10 SCC 169**.

10. Per contra, Mr. Saring, learned counsel for the respondents, has submitted that the suit as instituted by the appellants, herein, was clearly barred in-as-much as the plot of land not being allotted to any individual including the appellants, herein, and the same being a government land and therefore, action being initiated by the competent authority under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, and issuance of Show Cause Notices by the jurisdictional Estate Officer having occasioned; it would be only open to the aggrieved parties to institute proceedings under Section 12 of the said Act of 2003, before the jurisdictional Deputy Commissioner and the civil Court would have no jurisdiction regarding the issue of occupation of

the government land without valid allotment order.

11. Having made the above submissions, Mr. Saring, learned counsel, has proceeded to submit that the disputed plot of land was under the possession of the predecessor-in-interest of respondent No. 2, herein, since the year 1985 and they have been peacefully occupying the said plot of land. It is further submitted that the respondents, herein, have also applied for grant of allotment of the said land before the competent authority and till the last part of 2022; there was no claim raised by any person including the appellants, herein, with regard to the said plot of land.

12. Mr. Saring, learned counsel, has further submitted that the jurisdictional Estate Officer, had on 23.11.2015, issued a Show Cause Notice, under Section 4(i) and (ii) of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, upon the respondent No. 1, herein, and the said respondent had taken steps in the matter, thereafter. The learned counsel has also submitted that on 26.05.2022, a further Show Cause Notice, was served upon the respondent No. 2, herein, on a complaint made by the appellants, herein. It is further submitted that on 08.02.2023, the Estate Officer, Jengging, had visited the plot of land, under dispute, and verbally instructed that no new structure is to be erected and if erected, the same will be evicted. The proceeding instituted by the Estate Officer, Jengging, is contended to have been not taken to its logical conclusion.

13. Mr. Saring, learned counsel, in the above premises, has submitted that the proceeding over the plot of land having been already instituted by

the Estate Officer, Jengging, under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, it is not open to the appellants, herein, to approach the civil Court by instituting Title Suit No. 27/2022 and in the event, any grievance existed in respect of the land, in question; appropriate proceeding under the provisions of the said Act of 2003, was mandated to be so instituted by the appellants, herein.

14. Mr. Saring, learned counsel, has further disputed the possession by the appellants, herein, of the Schedule A and B land and also disputed the dispossession of the appellants, herein, by the respondents, herein, from the said plot of land on 06.11.2022. The learned counsel has submitted that in the facts and circumstances involved, in the present matter; the order, dated 19.05.2023, issued by the learned Civil Judge(Senior Division), East Siang District, Pasighat, having been so issued after considering all relevant factors including appreciating of the proceedings so instituted under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003; a clear bar existing in the civil Court to entertain proceedings in the matter, the rejection of the prayer of the appellants, herein, for an injunction, cannot be said to be erroneous. The learned counsel, has, therefore, submitted that the order, dated 19.05.2023, would not call for any interference and the preliminary issue now framed by the learned trial Court in the Title Suit No. 27/2022, would now call for an early adjudication. In support of his submissions, Mr. Saring, learned counsel, has relied upon the decision of the Hon'ble Supreme Court in the case of **The Tehsildar, Urban Development Trust & anr. v. Ganga Bai Menany(Dead)**, judgment, dated 30.02.2024, in Civil Appeal No. 722/2012.

15. I have heard the learned counsels appearing for the parties and also perused the materials available on record. The judgments relied upon by the learned counsels appearing for the parties have also been duly perused.

16. The factual position with regard to the land, in question, has been noticed hereinabove. Both the appellants, herein, and the respondents, herein, claim to be in possession of the land, in question. While it is the case of the appellants, herein, that the plot of land as described under Schedule A of the Title Suit No. 27/2022, was under the possession of the predecessor-in-interest Late Sisi Jongkey since the year 1980 and thereafter, on her death, was possessed by the appellants, herein, and further that a part and parcel of the said plot of land measuring 130 sq. mtrs. was illegally possessed by the respondents, herein, by dispossessing the appellants, herein, on 06.11.2022, and the said plot of land has been described under Schedule B of Title Suit No. 27/2022; the appellants, herein, had instituted the said Title Suit No. 27/2022 under Section 6 of the Specific Relief Act, 1963, praying for the following reliefs:

“(i). A decree for declaration that the plaintiffs are the rightful and lawful possessor of the scheduled A and B plot of land and that the action of the defendant nos 1 and 2 thereby dispossessing the plaintiff from the scheduled B land is illegal, mala fide and was effectuated without following the due process of law;

(ii). A decree for recovery of possession of the schedule B property in favour of the plaintiff as per the mandate encapsulated in Section 6 of the Specific Relief Act, 1963 thereby evicting the defendant nos. 1 and 2, their men, agents, servants and anybody claiming through them from the scheduled property and khas and vacant possession of the same may be handed over to the plaintiff through the Bailiff of this Hon'ble Court and

(iii). Permanent injunction restraining the Defendants from disturbing the peaceful possession of the Plaintiffs over the balance portion of land measuring 1870Sqmtrs of Schedule-A land excluding the Schedule-B land measuring 130sqmtrs and/or restraining the Defendants from constructing any permanent structure over the entire Schedule- B land.

(iv). For any other relief or reliefs to which the plaintiff may be found entitled to in law and in equity;

(v). And for costs of the suit.”

17. A perusal of the relief so prayed for by the appellants, herein, in Title Suit No. 27/2022, would go to reveal that no relief has been sought for against any governmental authority for any action so taken by such authority under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003. The appellants, herein, had only prayed for a declaration that they were the rightful and lawful possessors of the Schedule A and B land and the action on the part of the respondents, herein, in dispossessing the appellants, herein, from the Schedule B land, was illegal, mala fide and effectuated without due process of law. Accordingly, the appellants, herein, had prayed for consequential relief for recovery of the possession of the said plot of land from which they were purportedly illegally dispossessed.

18. The materials brought on record would go to reveal that the Estate Officer, Jengging, had issued Show Cause Notices to the respondent No. 1, herein, invoking the provisions of Section 4 of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, objecting to the unauthorized construction of structures on the said plot of land. Further, vide a Show Cause Notice, dated 26.05.2022, the respondent No. 2, herein, was directed by the Extra Assistant Commissioner, Jengging, to stop all construction activities over the said plot of land and to show cause as to why a legal action should not be initiated against her, for her illegal activities. The said notice, dated 26.05.2022, was so issued basing on a complaint made by the appellants No. 2, 4 & 5, herein.

19. It is also a matter of fact that the learned trial Court vide order, dated 06.12.2022, in Misc.(J) Case No. 56/2022, while issuing notice therein, had directed the parties to maintain status quo over both Schedule A and B till the next date of listing. It was further directed that no fresh construction shall be taken up by both parties till further orders of the learned trial Court. It is seen that alleging violation of the said interim directions, the appellants, herein, had instituted I.A. No. 06/2023. The learned trial Court had proceeded to take-up the said I.A. No. 06/2023 for consideration and upon hearing the learned counsel for the parties; disposed of the same vide order, dated 19.05.2023. The learned trial Court vide the order, dated 19.05.2023, noticing that the Estate Officer concerned had instituted proceedings under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, in relation to the plot of land in dispute and by appreciating the objections raised by the learned counsel for the respondents, herein, that the Title Suit No. 27/2022 would not be maintainable in view of the specific bar under the provisions of the said Act of 2003, in institution of proceedings before the civil Court against actions initiated against the said Act of 2003; proceeded to conclude that the jurisdiction of the learned trial Court to try the suit was barred and accordingly, no interim directions was called for to be so passed in favour of the appellants, herein. Having drawn the said conclusions; the learned trial Court proceeded to vacate the ad interim status quo passed by the Court vide order, dated 06.12.2022, and thereby, proceeded to dispose of both I.A. No. 06/2023 and Misc.(J) Case No. 56/2022.

20. The issue arising in the present proceeding is as to whether Title Suit No. 27/2022 instituted by the appellants, herein, before the learned trial Court, under Section 6 of the Specific Relief Act, 1963, would be

maintainable in view of the proceedings instituted by the Estate Officer with regard to the land, in question, being government land under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003.

21. As contended by Mr. Kaushik, learned counsel for the appellants, herein, the scope of a suit under Section 6 of the Specific Relief Act, 1963, provides a summary remedy and is permissible to be instituted by a person wrongfully dispossessed from the property for recovery of the same by proving his such previous possession without being required to prove his title.

22. The issue being with regard to the intent and purport of a suit instituted under the provisions of Section 6 of the Specific Relief Act, 1963, Section 6, being relevant, is extracted hereinbelow:

“6.suit by person dispossessed of immovable property-

(1) if any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person [through whom he has been in possession or any person] claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in that suit.

(2) No suit under this section shall be brought-

(a) after the expiry of 6 months from the date of dispossession; or

(b) against the government.

(3) No appeal shall lie from any order or decree from any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing from establish his title to such property and recover possession thereof.”

23. It is a settled position of law that the provisions of Section 6 of the Specific Relief Act, 1963, provides a summary remedy for a person who while being in possession of the immovable property, is ousted therefrom, and such remedy is available to a person who is dispossessed and can be availed before the civil Court, where he can seek restoration of possession. It is the further settled position of law that a suit under Section 6 of the Specific Relief Act, 1963, can be entertained and decreed even when both the plaintiff and the defendant have no title to the suit land and when the plaintiff proves his/her prior possession, he is entitled to decree for possession against the defendant, who has dispossessed him. A plaint seeking such a relief must thus only aver previous possession of the plaintiff and dispossession by the defendant, otherwise in due course of law. In a suit under Section 6 of the Specific Relief Act, 1963, the question of title cannot be gone into and the only question that deserve a consideration is whether the plaintiff was, or, was not in actual possession of the property and whether he was dispossessed within 6(six) months prior to the date of institution of the suit, except in accordance with the law, and a Suit for such a nature can be decided where neither party has a title.

24. The Hon'ble Supreme Court in the case of **Lallu Yeshwant Singh**(supra), noticing the earlier decision of the Court as well as a Full Bench decision of the Allahabad High Court in the case of **Yar Mohammad v. Lakshmi Das**, reported in **I.L.R.[1958] 2 All 394**, drew the following conclusions:

“9. In Midnapur Zamindary Company Limited v. Naresh Narayan Roy the Privy Council observed:

“In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a court.”

10. In *K.K. Verma v. Naraindas C. Malkani Chagla, C.J.*, stated that the law in India was essentially different from the law in England. He observed:

“Under the Indian law the possession of a tenant who has ceased to be a tenant is protected by law. Although he may not have a right to continue in possession after the termination of the tenancy his possession is juridical and that possession is protected by statute. Under Section 9 of the Specific Relief Act a tenant who has ceased to be a tenant may sue for possession against his landlord if the landlord deprives him of possession otherwise than in due course of law, but a trespasser who has been thrown out of possession cannot go to Court under Section 9 and claim possession against the true Owner.”

11. In *Yar Mohammad v. Lakshmi Das*, the Full Bench of the Allahabad High Court observed:

“No question of title either of the plaintiff or of the defendant can be raised or gone into in that case (under Section 9 of the Specific Relief Act). The plaintiff will be entitled to succeed without proving any title on which he can fall back upon and the defendant cannot succeed even though he may be in a position to establish the best of all titles. The restoration of possession in such a suit is, however, always subject to a regular title suit and the person who has the real title or even the better title cannot, therefore, be prejudiced in any way by a decree in such a suit. It will always be open to him to establish his title in a regular suit and to recover back possession.”

The High Court further observed:

“Law respects possession even if there is no title to support it. It will not permit any person to take the law in his own hands and to dispossess a person in actual possession without having recourse to a court. No person can be allowed to become a judge in his own cause. As observed by Edge, C.J., in *Wali Ahmed Khan v. Ayodhya Kundu*:

“The object of the section was to drive the person who wanted to eject a person into the proper court and to prevent them from going with a high hand and ejecting such persons.”

12. Our attention was invited to the decision of the Calcutta High Court in *State of West Bengal v. Birendra Nath Basunia*. In that case the High Court refused to issue an order under Article 226 of the Constitution prohibiting the Government from forcibly taking possession of lands which had been validly resumed by Government. We are not concerned with that question here. But we do not agree with the conclusion of the High Court that a lessor is entitled in India to use force to throw out his lessee.

13. In *Hillaya Subbaya Hegde v. Narayanappa Timmaya* it was observed:

“No doubt, the true owner of property is entitled to retain possession, even though he has obtained it from a trespasser by force or other unlawful means : *Lillu bin Raghushet v. Annaji Parashram and Bandu v. Naba*.

We are unable to appreciate how this decision assists the respondent. It was not a suit under Section 9 of the Specific Relief Act. In *Lillu bin Raghushet v. Annaji Parashram* it was recognised that “if there is a breach of the peace in attempting to

take possession, that affords a ground for criminal prosecution, and the attempt is successful, for a summary suit also for a restoration to possession under Section 9 of the Specific Relief Act 1 of 1877 Dadabhai Narsidas v. Sub-Collector of Broach. In Bandu v. Naba it was observed by Sargent, C.J., as follows:

“The Indian legislature has, however, provided for the summary removal of any one who dispossesses another, whether peaceably or otherwise than by due course of law; but subject to such provision there is no reason for holding that the rightful owner so dispossessing the other is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. This would also appear to be the view taken by West, J., in Lillu v. Annaji.”

14. In our opinion, the law on this point has been correctly stated by the Privy Council, by Chagla, C.J., and by the Full Bench of the Allahabad High Court, in the cases cited above.”

25. The Hon'ble Supreme Court in the above-referred decision, clearly mandated that the suit so instituted for recovery of possession of the land, the question of title need not be gone into. The Hon'ble Supreme Court in the case of **Mohd. Mehtab Khan**(supra), with regard to the nature and object of a proceeding under Section 6 of the Specific Relief Act, 1963, proceeded to draw the following conclusions:

“16. A proceeding under Section 6 of the Specific Relief Act, 1963 is intended to be a summary proceeding the object of which is to afford an immediate remedy to an aggrieved party to reclaim possession of which he may have been unjustly denied by an illegal act of dispossession. Questions of title or better rights of possession does not arise for adjudication in a suit under Section 6 where the only issue required to be decided is as to whether the plaintiff was in possession at any time six months' prior to the date of filing of the suit. The legislative concern underlying Section 6 of the SR Act is to provide a quick remedy in cases of illegal dispossession so as to discourage litigants from seeking remedies outside the arena of law. The same is evident from the provisions of Section 6(3) which bars the remedy of an appeal or even a review against a decree passed in such a suit.”

26. The Hon'ble Supreme Court in the case of **ITC Ltd. v. Adarsh Cooperative Housing Society Ltd.**(supra), in respect of a proceeding instituted under the provisions of Section 6 of the Specific Relief Act, 1963, for recovery of the possession of property from which a possessor has been dispossessed illegally, had concluded, as under:

“9. Section 6 of the Specific Relief Act, 1963 under which provision of law the suit in question was filed by the respondent-plaintiff is in pari materia with Section 9 of the 1877 Act. A bare reading of the provisions contained in Section 6 of the 1963 Act would go to show that a person who has been illegally dispossessed of his immovable property may himself or through any person claiming through him recover such possession by filing a suit. In such a suit, the entitlement of the plaintiff to recover possession of property from which he claims to have been illegally dispossessed has to be adjudicated independently of the question of title that may be set up by the defendant in such a suit. In fact, in a suit under Section 6, the only question that has to be determined by the Court is: whether the plaintiff was in possession of the disputed property and he had been illegally dispossessed therefrom on any date within six months prior to the filing of the suit? This is because Section 6(2) prescribes a period of six months from the date of dispossession as the outer limit for filing of a suit. As the question of possession and illegal dispossession therefrom is the only issue germane to a suit under Section 6, a proceeding thereunder, naturally, would partake the character of a summary proceeding against which the remedy by way of appeal or review has been specifically excluded by sub-section (3) of Section 6. Sub-section (4) also makes it clear that an unsuccessful litigant in a suit under Section 6 would have the option of filing a fresh suit for recovery of possession on the basis of title, if any.

10. In fact, the above view has found expression in several pronouncements of this Court of which reference may be made to the decisions in *Lallu Yeshwant Singh v. Rao Jagdish Singh*², *Krishna Ram Mahale v. Shobha Venkat Rao* and *Sanjay Kumar Pandey v. Gulbahar Sheikh*. In fact, para 4 of this Court's judgment passed in *Sanjay Kumar Pandey* may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow: (SCC p. 665)

"4. A suit under Section 6 of the Act is often called a summary suit inasmuch as the enquiry in the suit under Section 6 is confined to finding out the possession and dispossession within a period of six months from the date of the institution of the suit ignoring the question of title. Sub-section (3) of Section 6 provides that no appeal shall lie from any order or decree passed in any suit instituted under this section. No review of any such order or decree is permitted. The remedy of a person unsuccessful in a suit under Section 6 of the Act is to file a regular suit establishing his title to the suit property and in the event of his succeeding he will be entitled to recover possession of the property notwithstanding the adverse decision under Section 6 of the Act. Thus, as against a decision under Section 6 of the Act, the remedy of unsuccessful party is to file a suit based on title. The remedy of filing a revision is available but that is only by way of an exception; for the High Court would not interfere with a decree or order under Section 6 of the Act except on a case for interference being made out within the well-settled parameters of the exercise of revisional jurisdiction under Section 115 of the Code."

27. Having noticed the intent and purport of Section 6 of the Specific Relief Act, 1963; this Court is of the considered view that Title Suit No. 27/2022 so instituted by the appellants, herein, before the Court of learned

Civil Judge(Senior Division), East Siang District, Pasighat, was maintainable inspite of the fact that the land, in question, still is a government land and neither, the appellants, herein, nor, the respondents, herein, have any title to the said plot of land.

28. The said proceedings would be further maintainable inspite of the fact that the proceedings instituted by the jurisdictional Estate Officer under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, in-as-much as, Title Suit No. 27/2022 does not assail any such action instituted by the Estate Officer and/or any other competent authority with regard to the land, in question, and the suit is only on the allegations of illegal dispossession of the appellants, herein, by the respondents, herein, on 06.11.2022.

29. This Court further notes that the suit was so filed within the time-frame so prescribed under the provisions of Section 6 of the Specific Relief Act, 1963, i.e. within a period of 6 months from the date of alleged dispossession of the appellants, herein, from the lands, under their possession, by the respondents, herein.

30. Accordingly, this Court proceeds to hold that Title Suit No. 27/2022 so instituted by the appellants, herein, was so instituted complying with the provisions of Section 6 of the Specific Relief Act, 1963, and the same not being against any action taken by any governmental authority and being only to the extent of recovery of the possession of the appellants, herein, purportedly illegally dispossessed by the respondents, herein, on

06.11.2022; the same would require a consideration by the learned trial Court.

31. The steps as taken by the respondent authorities under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003, and touching upon the disputed land involved in Title Suit No. 27/2022, would not have any consequence in the learned trial Court in extending the consideration required to be made pertaining to the grievance raised by the appellants, herein, in the proceeding of Title Suit No. 27/2022, and the same shall be required to be so considered independent of the proceeding touching upon the disputed plot of land instituted by the Estate Officer, under the provisions of the Arunachal Pradesh Public Premises (Eviction of Unauthorized Occupants) Act, 2003.

32. In view of the discussions and conclusions reached hereinabove; this Court is of the considered view that the order, dated 19.05.2023, passed by the learned Civil Judge(Senior Division), East Siang District, Pasighat, in I.A. No. 06/2023; disposal of Misc.(J) Case No. 56/2022 and vacation of the status quo order, dated 06.12.2022, would call for an interference by this Court.

33. Accordingly, the order, dated 19.05.2023, passed by the learned Civil Judge(Senior Division), East Siang District, Pasighat, in Misc. Case No. 56/2022(in Title Suit No. 27/2022), hereby stands set aside. The status quo order, dated 06.12.2022, is restored. Further, the I.A. No. 06/2023 and Misc.(J) Case No. 56/2022 are both restored to the files of the learned trial Court with a further direction to proceed to consider the same in

accordance with law.

34. With the above directions and observations, the instant appeal stands allowed and accordingly, stands disposed of.

JUDGE

Comparing Assistant