

227.

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.1180 of 2014

Date of decision:05.11.2015

Raj Kumar and another

.... Petitioners

versus

Deepak Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. V.K. Sachdeva, Advocate,
for the petitioners.

Mr. Harsh Kinra, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ? No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision petition is brought by the defendant, who was ordered to deliver possession to the plaintiff-respondent in a suit for recovery of possession under Section 6 of the Specific Relief Act (for short, 'the Act'). The plaintiff claimed himself to be a purchaser of the property from one Tejinder Kaur through a sale deed dated 13.03.2012 and Tejinder Kaur, in turn, had earlier purchased the property from Parveen Kumar on 24.01.2012. The plaintiff was referring to two documents of purchase and the reference of the

property as having been delivered to Tejinder Kaur through the registered document dated 24.01.2012. As an immediate cause for the suit, the plaintiff would contend that when he was whitewashing the premises, he was disturbed by a body of persons including the defendant on 04.04.2012 and he was dispossessed a few days later. There was also a police complaint lodged by the plaintiff on 28.06.2012 stating that the plaintiff was dispossessed on 20.03.2012. There had been seemingly a contradiction on the date of dispossession, namely, in the suit, he had referred to a few days after 04.04.2012 was the date of dispossession, while in the FIR lodged subsequent to the institution of the suit, he had made a reference to dispossession on 20.03.2012.

2. The defendant was relying on an agreement of sale said to have been executed by Parveen Kumar on 10.02.2012, that is, admittedly after the date of sale by Parveen Kumar in favour of Tejinder Kaur, who was the plaintiff's vendor. The agreement of purchase by the defendant was for a consideration of ₹15 lakhs and the document recited a payment of ₹10 lakhs and delivery of possession as having been given to the defendant on the same day when the agreement was written on 10.02.2012. The defendant was contending that the essential ingredient in a suit filed under Section 6 of the Act shall be to examine that the plaintiff was already in possession of the property and such possession was dispossessed by

a person, who had no right to dispossess him. The defendant wanted to make an issue about the fact that the plaintiff offered no evidence for examination of Tejinder Kaur to state that she actually delivered possession of the property to the plaintiff on the day when she sold the property on 13.03.2012 or Tejinder Kaur herself was in possession of the property pursuant to the purchase dated 24.01.2012. If Tejinder Kaur's possession was not proved at any time, she could not have also delivered possession of the property to the plaintiff on 13.03.2012 to help the plaintiff to plead for the reliefs claimed under the suit. The defendant had also relied on some witnesses to speak about the fact that he was actually in possession and he was using it as store for a shop which he was running elsewhere in the vicinity.

3. The trial court held that the claim by the defendant was under an agreement from Parveen Kumar who had himself earlier sold the property to Tejinder Kaur and, therefore, the reference to the property as having been handed over to the defendant under the agreement could not be relied on and in any event, such a person cannot hold possession against the plaintiff, who sourced his right to a document of sale anterior in point of time to the agreement relied on by the defendant.

4. The learned counsel for the petitioners reiterates the position that was brought out in defence and attempting to play

down the effect of the sale effected by Parveen Kumar in favour of Tejinder Kaur on 24.01.2012, for, according to him, the defendant's right to the property is not a point in issue, but the crucial issue was the plaintiff's own possession prior to the suit at any point of time.

5. In a suit for recovery of possession under Section 6 of the act, it is no doubt true that the person, who resorts to an action, ought to prove possession for a period within 6 months prior to the institution of the suit. It must be noticed that it was a shop and the defendant was himself pleading a right of entry through an agreement that took place on 10.02.2012. If there are two documents that referred to possession, one a registered document dated 24.01.2012 that refers to Parveen Kumar's sale to Tejinder Kaur delivering possession of property to Tejinder Kaur and yet another document by the same person Parveen Kumar under an agreement to the defendant on 10.02.2012 making a similar recital of delivery of possession, I will lend credence to a recital in a registered document than to a recital in an unregistered agreement. If both the plaintiff and the defendant were sourcing title to the same person, it surely became relevant whether Parveen Kumar could have ever delivered possession of the property to the defendant. If there was such a recital through the document dated 10.02.2012, I would take it to be irrelevant in the context of his own registered sale deed to Tejinder Kaur and if the plaintiff would contend that he was put in possession

pursuant to the purchase on 13.03.2012, I will make no serious issue of a discrepancy of the date of dispossession given in the FIR as 20.03.2012 and stated in the plaint as a few days after 04.04.2012. In either event, the legal requirement of a person having been dispossessed within a period of 6 months is clearly available. The defendant was trying to rely on a document which on the face of it, ought to wilt before the document of purchase under the registered instrument from Parveen Kumar himself. There was a greater burden on the defendant to establish, in a scramble of possession between parties, that the defendant's vendor had still retained possession after the sale which he had made on 24.01.2012. In this case, most significantly, the plaintiff has himself examined Parveen Kumar as PW3 who has spoken about the fact of delivery of possession of property to Tejinder Kaur. His evidence literally draws the final nail to the plaintiff's coffin. If the defendant could not examine Parveen Kumar, the examination of several other witnesses to speak about his possession at the time of trial mean nothing. After all a suit under Section 6 itself arises only in a situation where the defendant is in possession and he was merely making an attempt on the defendant to over do things by bringing several witnesses to state that he was in possession.

6. It is also stated that the suit has been filed by the plaintiff through power of attorney and the plaintiff has not taken

the witness box. I will not make this to be of any significance, for, a point is not such as to make the issue of proof of possession peculiar only to the plaintiff and not the power of attorney. The non-examination of the plaintiff is not very significant in such a situation. There was no error in the order of the court below upholding the plaintiff's right to refer possession under such a situation and I will not find any error for intervention in revision. Revision petition is without merit and it is dismissed with costs of ₹3,000/-.

(K.KANNAN)
JUDGE

05.11.2015
sanjeev