

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

**Civil Revision No. 3802 of 2012 (O&M)
Date of decision:- 14.12.2015**

Charanjeet Singh @ Lucky and others

...Petitioners

Versus

Suresh Kumar and anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr. Amit Jain, Advocate
for the petitioners.

Mr. V.B. Aggarwal, Advocate
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RITU BAHRI J.

This petition under Article 227 of the Constitution of India is for setting aside order dated 24.02.2012 passed by the learned Addl. Civil Judge (Sr. Divn.) Kurukshetra.

The case of the plaintiffs/respondents (for short 'the respondents') before the learned trial Court was that they are owner of property in question, which was earlier owned by Nahar Singh, Jagga Singh, Harmesh Kaur, Randhir Singh, Jasmer Kaur, Harbans Singh, Angrej Kaur, as they have sold the plot to the plaintiffs vide sale deed dated 28.09.2006, which was corrected vide registered sale deed dated

05.10.2006. The possession of the said land was given to plaintiffs on the spot. They have got their plot demarcated at the spot on 24.12.2006 through Local Commissioner Sadar Kanungo under the order of Tehsildar Thanesdar. In the first week of January, 2007, the petitioners/defendants (for short 'the petitioners') entered forcibly in the suit property and raised illegal construction over said plot. The petitioners are carrying business therein and are earning huge profit of Rs.5000/- per month and thus, respondents are entitled to recover mesne profit of the suit property from the petitioners.

Thereafter, plaintiffs/respondents (for short 'respondents') filed a suit alleging dispossession within six months of filing of the suit on the ground that they were owners of the plot measuring 59 sq yards and further alleging that the petitioners entered forcibly in their suit property.

The suit was contested by the petitioners on the ground that the suit was not maintainable and the only remedy with the respondents is to file a suit for partition. Further the respondents had not made all the co-sharers as party. Further the boundaries as mentioned in the alleged sale deed to be executed by Nahar Singh etc in favour of respondents relating to immovable property out of Khasra No. 19//12 i.e 1/88th share out of total land measuring 7 kanal 13 marla and alleged sale deed is false and fabricated one and its

boundaries do not tally with the existing position at the spot. There was no site plan in favour of Nahar Singh etc regarding the suit property which was not partitioned along with the other property. Naranjan Singh had sold land measuring 1 kanal 02 marla which is a part of Rect. No. 19 Khasra No. 12 situated at Village Mirzapur, Tehsil Thanesar Distt Kurukshetra to Smt. Joginder Kaur and Smt. Paramjit Kaur, vide registered sale deed dated 18.09.1980. Respondent Nos. 1 and 2 are sons of Joginder Kaur and after her death, mutation dated 28.08.2003 was sanctioned in favour of respondent No. 2. The mother of respondent No. 1 after purchase of the said land raised construction towards the eastern side of land about 02 marlas which was lying vacant along with other property. Niranjan Singh gave the said land to Smt. Joginder Kaur for sale consideration of Rs.99/- and she raised the construction over it in the year 1982 and installed an electricity connection. No writing was scribed by Niranjan Singh and Joginder Kaur has already been died. Prior to the alleged sale deed on 28.09.2006, no possession was ever been given by said Nahar Singh, thus Nahar Singh etc could not transfer the possession to the plaintiffs, as alleged by them.

No replication was filed by the plaintiffs and the trial Court framed the following issues:-

“1. Whether the plaintiffs are entitled to a decree for

possession as prayed for? OPP

2. *If issue No. 1 is decided in favour of plaintiffs then as whether the plaintiffs are entitled for a decree for permanent injunction as prayed for? OPP*

3. *Whether the plaintiffs have no locus standi and cause of action to file and maintain the present suit? OPD*

4. *Whether the suit is bad for non-joinder and misjoinder of necessary parties? OPD*

5. *Whether the suit had not been properly valued for the purpose of Court fees? OPD*

6. *Whether this Court has no jurisdiction to entertain and try the present suit? OPD*

7. *Whether the plaintiffs have concealed the true and material facts from this Court? OPD*

8. *Relief.”*

The trial Court after going through the entire evidence led by the parties, held that Ex D3 vide which the petitioners made an attempt to show that they had purchased 02 marla of land for Rs.99/- had no authenticity in the eyes of law as in the year 1980 predecessor-in-interest of defendants had purchased 22 marlas of land for valuable consideration of Rs.8000/- and if amount is calculated according to one marla each land then it will come to Rs.325/- approximately per

marla. It was further held by the learned trial Court that the disputed land measuring 59 sq yards which is situated ahead of eastern side of land measuring 1 kanal 02 marla, which was neither purchased by predecessor-in-interest of defendants nor they became owner of the property from any document as per record on file. Ex D3 relief upon by the defendants is neither a registered document nor confer any title. The description of the property has been duly shown in the annexed site plan Ex P2 but inadvertently property to the extent of 01 marla each was being shown in 02 different khewat in previous sale deed and the same was rectified vide registered document dated 05.10.2006 (Ex P3). Further at the time of demarcation, the disputed land was not vacant. Hence, the suit of the respondents was decreed and the trial Court directed that the respondents are entitled to take possession of property after removal of kotha by the petitioners, within a period of two months positively and in case, petitioners failed to remove their illegal and unauthorised construction over disputed property within a period of two months, then petitioners are held liable to pay the mesne profit for use and occupation of the property belonging to the respondents at the rate of Rs.5000/- per month w.e.f the date of passing of this order till the date of delivery of actual possession of property in due course of law.

Learned counsel contends that an appeal or revision is

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maintainable for the plaintiffs and not a suit filed under Section 6 of the Specific Relief Act, as the suit had been filed after paying the Court fee of Rs.12770/- by the plaintiffs.

This aspect has been considered by Hon'ble the Supreme Court of India in a case of ***I.T.C Ltd vs. Adarsh Coop. Housing So. Ltd, 2012(4) RCR (Civil) 291*** whereby Hon'ble the Supreme Court has relied upon a judgment ***i.e Sanjay Kumar Pandey vs. Gulabahr Sheikh, 2004(3) RCR (Civil) 466*** and observed as under:-

6. Section 6 of the Specific Relief Act 1963 under which provision of law the suit in question was filed by the plaintiff-respondent is pari-materia with Section 9 of the Act of 1877. A bare reading of the provisions contained in Section 6 of the Act of 1963 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. SubSection 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. 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 Yashwant Singh (dead) by his LRs. Vs. Rao Jagdish Singh & Ors. , Krishna Ram Mahale (D) by LRs Vs. Mrs.Shobha Venkat Rao and Sanjay Kumar Pandey & Ors. V. Gulabahar Sheikh & Ors.**³. In fact, para 4 of this Court's judgment passed in Sanjay Kumar Pandey (supra) may be a useful reiteration of the law in this regard. The same is, therefore, extracted hereinbelow:-*

“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- 1 AIR 1968 SC 620 2 AIR 1989 SC 2097 3 SCC 2004

*(4) 664 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.***

7. It is indeed sad, if not unfortunate, that what was intended by the legislature to be a summary proceeding to enable a person illegally dispossessed to effect quick recovery of possession of the immovable property has, in the present case, erupted into an over two decades old litigation. The sheer number of pending lis permitted the learned Trial Court to return its findings, after almost a decade, that it is, indeed, the plaintiff who was in possession of the disputed property on the relevant date and was dispossessed therefrom in an illegal manner by the defendant. Though Section 6 (3) of the Act of 1963 bars the remedy of appeal and review, a small window, by way of a revision, was kept open by the legislature possibly to enable the High Court to have a second look in the matter in an exceptional situation. However, section 115 of the CPC was amended in its application to the State of Uttar Pradesh and the forum for exercise of the revisional jurisdiction came to be recognized as the next Superior Court and not necessarily by the High Court. That is how the unsuccessful defendant moved the learned District Judge. Though the Revisional Court reiterated the findings of the learned Trial Court, another half a decade rolled by. Next in the hierarchical system of courts, i.e. the High Court was thereafter approached by way of a Civil

Miscellaneous Writ Petition filed under Article 277 of the Constitution. The High Court answered the question, again, against the defendant. The manner and content of the same has been challenged before this Court in the present Appeal, primarily, on the ground that when formal partition of the land had not taken place the issue of possession of specific shares by the co-sharers could not have been determined so as to vest jurisdiction in the trial Court to pass a decree under Section 6 of the Act of 1963.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***State of Haryana and others v. Manoj Kumar, 2010(2) RCR Civil 298*** wherein it has been held that the Courts have limited power under Article 227 of the Constitution of India and it cannot be invoked except for ensuring that the subordinate Courts function within its limits. Further, the High Court cannot exercise its power under Article 227 by interfering with the findings of fact and set aside the judgments of the courts below on merit. In para 27, 28 and 29, it has been observed as under:-

*27. A three-Judge Bench of this court in **Rena Drego (Mrs.) v. Lalchand Soni & Others (1998) 3 SCC 341** again abundantly made it clear that the High Court cannot interfere with the findings of fact recorded by the subordinate court or the tribunal*

while exercising its jurisdiction under Article 227. Its function is limited to seeing that the subordinate court or the tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it.

28. *In Virendra Kashinath Ravat & Another v. Vinayak N. Joshi & Others (1999) 1 SCC 47 this court held that the limited power under Article 227 cannot be invoked except for ensuring that the subordinate courts function within its limits.*

29. *This court over 50 years has been consistently observing that limited jurisdiction of the High Court under Article 227 cannot be exercised by interfering with the findings of fact and set aside the judgments of the courts below on merit.*

Learned counsel for the petitioner has referred to a case i.e **C.R. No. 4762 of 2002 and connected case titled as Shri Gurdev Singh vs. Satpal Sharma and others**, decided on 18.05.2009 wherein this Court had allowed a revision petition wherein in a suit filed under Section 6 of the Specific Relief Act by the respondent, they had sought recovery of possession of property claiming that they were dispossessed unlawfully by the petitioner, taking advantage of an interim order directing status quo to be maintained in relation to a property in a suit instituted by the revisionist-petitioner. This Court set aside the order of the learned trial Court and it was further held that it was revision which was maintainable against an order passed under

Section 6 of the Specific Relief Act.

A perusal of the order shows that in that case, the plaintiffs have miserably failed to show any evidence before the trial Court that they were in possession of the property before 1998, the defendants at the same time had led sufficient evidence to show that they were in possession of the suit property as they had applied for loan to carry out their business on the disputed property. The plaintiffs had admitted that Kanwaljit Singh had given possession in the property in the year 1978. This Court set aside the judgment of the trial Court, as it was based on preverse interpretation of evidence. S.L.P filed against the said judgment has also been dismissed.

However, in the facts of the present case, the revision petition is maintainable as on facts, the finding has rightly been recorded by the trial Court that Ex D3 vide which the petitioners made an attempt to show that they had purchased 02 marla of land for Rs.99/- had no authenticity in the eyes of law as in the year 1980 predecessor-in-interest of defendants had purchased 22 marlas of land for valuable consideration of Rs.8000/-, vide Ex D2 @ Rs.325/- per marla.

Learned counsel for the petitioner has not been able to show any evidence, which has been mis-read by the trial Court in returning a finding that Ex P1-sale deed and Ex P4-demarcation report

were not correct. The respondents were owner of property in question, which was earlier owned by Nahar Singh etc, as they have sold the plot to the plaintiffs vide sale deed dated 28.09.2006, which was corrected vide registered sale deed dated 05.10.2006. The possession of the said land was given to plaintiffs on the spot. They have got their plot demarcated at the spot on 24.12.2006 through Local Commissioner Sadar Kanungo under the order of Tehsildar Thanesdar.

Keeping in view the fact that this Court had limited scope of jurisdiction under Article 226 of the Constitution of India and applying the ratio of Supreme Court judgments, the Court below has dealt with the matter in correct perspective and there is no illegality in the impugned order of the Courts below warranting interference in exercise of revisional jurisdiction under Article 227 of the Constitution of India.

The revision petition is devoid of merit and is accordingly dismissed.

14.12.2015

G Arora

(**RITU BAHRI**)
JUDGE