

\$~A-

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of decision: 22.09.2016

+ C.R.P. 127/2015

VIRENDER KUMAR

..... Petitioner

Through

Mr.S.Prasad, Advocate

Versus

SUNDER KUMAR

..... Respondent

Through

Mr.Tarun Rana and Mr.Sunny
Pandey, Advocates.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present Revision Petition the petitioner seeks to impugn the judgment of the trial court dated 30.6.2015 dismissing the suit filed by the petitioner under Section 6 of the Specific Relief Act for possession.
2. The petitioner filed a suit for recovery of possession, mesne profit and damages claiming to be absolute owner of immovable property and also having possession over Schedule A property. Schedule B is stated to be a part and parcel of Schedule A comprising two rooms at the first floor of the dwelling house of the petitioner. It is averred in the plaint that the petitioner had erected a small jhuggi on the open ground of land adjacent to his parental house i.e. Schedule A. This construction took place as the petitioner is stated to have been thrown out by his parents, defendant and brothers from the parental house. The defendant/respondent is one of the brothers of the petitioner.

3. It is further stated in the plaint that after living for about 20 years in a jhuggi, the petitioner desired to construct a pakka building. He started construction work in 2009 and completed the same in 2010. On 7.9.2010 it is stated that the respondent forcibly entered into the dwelling house of the petitioner with the help of local gundas and police and locked the doors of the two rooms at first floor i.e. Schedule B. It is stated that a complaint was made to the police they came to the spot but did not take any action.

4. The respondent filed his written statement stating that even schedule A of the property is ancestral property. It is further stated that the respondent and petitioners are brothers and there are two brothers also. They all i.e. all four are the sons of Shri Ram Singh and the parents are alive and the family members are residing in the same property in separate accommodation. According to the respondents, the property consists of two floors. A division/bifurcation was made by father of the parties with consent of all family members. The entire property was divided horizontally in two parts. Half part was given to the petitioner and the respondent. Ground floor of this half part comprising of three rooms was given to the petitioner and the first floor comprising three rooms was given to the respondent. Parents it is said are residing with the respondent on the first floor. It was the petitioner it is alleged who tried to forcibly dispossess the respondent from the first floor and called the PCR on 4.4.2010.

5. The trial court framed the following issues:-

- “i. Whether the suit is not maintainable in its present form? OPD
- ii. Whether the plaintiff is entitled to relief of possession of the suit property as prayed for? OPP

- iii Whether the plaintiff is entitled for *mesne profits* and damages against the defendant as prayed for? OPP
- iv. Whether the plaintiff is entitled to a relief of permanent injunction as prayed for? OPP
- v. Relief.”

6. The petitioner led the evidence of two witnesses, namely, PW-1 Suresh Kumar and PW-2 himself. Respondent did not lead any evidence.

7. A perusal of the impugned order shows that the trial court did not believe the testimony of both the witnesses PW-1 and PW-2. PW-1 had filed his affidavit by way of evidence and stated that he did the work of steel, iron gates, window, doors etc. in the house of the petitioner and was paid Rs.35,000/- as full and final settlement. The trial court noted that in his cross-examination he has said that there is only one room constructed on the ground floor and one room on the first floor though it is the case of the parties that there are three rooms on the ground floor and three rooms on the first floor. PW-1 also admitted in his cross-examination that he is unable to give the complete location of the respondent's house. He has also in his examination-in-chief exhibited Ex.PW1/1 an alleged agreement between the petitioner and him. In his cross-examination he submitted that during the last 12 years he has entered into written contracts with his clients for welding work only on 2-3 occasions. When he was asked to produce the written contracts he was unable to do the needful. Hence, the trial court concluded that the cross-examination casts serious doubts qua the veracity of the document Ex.PW1/1 and that it has been prepared at the instance of the petitioner only.

8. On the testimony of PW-2 the trial court noted that he has contradicted himself as he has admitted that there is no house adjacent to the suit property towards the north side though it is mentioned by him in the schedule A of the plaint that on the north side is the parental dwelling house. It also noted that the petitioner has failed to place on record any police complaints made after 25.9.2010. The ration card, Election I Card which have been relied upon by the petitioner are all dated of the year 2008. Admittedly, as per the petitioner no building existed then. It has been accepted by the petitioner that he was living in the said area in the jhuggi. Noting that the petitioner has failed to file even a single document showing that he has been residing at the address V-99, V Block, Old Nangal, Police Station Delhi Cantt., New Delhi for the last 20 years and that the suit property is separate from the ancestral house of the parties, the trial court concluded that there is no cogent evidence available to prove the case of the plaintiff.

9. I have heard learned counsel for the parties. Learned counsel for the petitioner has again reiterated and relied upon the evidence of PW-1 and the agreement Ex.PW1/1 to support his contention that the petitioner has been in possession of the property and has been forcibly dispossessed.

10. Section 6 of the Specific Relief Act reads as follows:

“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 claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

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

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

(b) against the Government.

(3) No appeal shall lie from any order or decree passed in 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 to establish his title to such property and to recover possession thereof.”

11. The basis for seeking relief under Section 6 of the Specific Relief Act was elaborated by the Supreme Court in the case of *ITC Limited v. Adarsh Cooperative Housing Society Limited*, (2013) 10 SCC 169. The court held as follows:

“9. 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. 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.”

12. As per section 6(3) of the Specific Relief Act no appeal lie from an order or decree passed in any suit instituted under the said section. Hence, the petitioner has filed the present revision petition.

13. The only evidence led by the petitioners, namely, the testimony of PW-1 and PW-2 does not inspire any confidence. The trial court has noted that PW-1 in his cross-examination has clearly stated that there is only one room at the ground floor and one room on the first floor, which is wholly contrary to the stand of the petitioner. Further, the contention that the person doing freelancing welding job would actually enter into written contract itself is a misleading contention. Judicial notice can be taken of the fact that minor contractual jobs are normally done on oral agreements rather than written agreements. This is demonstrated by the cross-examination where PW-1 who has said that in the last 12 years he has entered into written contracts for welding purpose only 2-3 times. The trial court concluded that testimony of PW-1 does not show prior possession of the petitioner on the suit property. There are no grounds to interfere in the said finding.

14. Similarly, there is nothing in the testimony of PW-2 to inspire confidence. As rightly noted by the trial court he claims to be living in the jhuggi for 20 years prior to 2009. He claims that he demolished the jhuggi and thereafter built the house. No evidence is placed on record about the petitioner having lived for 20 years in the jhuggi. It is claimed that

construction began in the property in 2009 and was finished in 2010. In the interregnum period when the jhuggi was demolished where the petitioner and his family stayed, is not stated. The Election I Card Ex. PW2/6 which is dated 18.10.2008 does not state that the petitioner is staying in a jhuggi. Same is the condition with the ration card which is also of 2008. The petitioner has placed on record the Electricity Bill Ex. PW2/8 which he states is the electricity bill sanctioned in his name. A perusal of the bill shows that the generation date is 08.2.2011 and it pertains to ground floor only. None of these documents show prior possession of the petitioner on the suit property. The trial court concluded that the evidence of the petitioner does not inspire confidence. There are no reasons to interfere in the said finding.

15. The petitioner has failed to prove his prior possession over the suit property. There are no reasons to interfere with the order passed by the trial court. The present petition is without merits and is dismissed.

**(JAYANT NATH)
JUDGE**

SEPTEMBER 22, 2016

n