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

% *Date of decision:* 10.02.2017

+ CM(M) 302/2015 & CM No.6340/2015

SANDHYA & ORS Petitioners

Through Mr.Manish Sharma, Advocate

versus

NARESH & ANR Respondents

Through Mr.Harsh Sinha, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 04.03.2015 by which a suit filed by the petitioners under Section 6 of the Specific Relief Act was dismissed at the threshold.

2. The petitioners had filed a suit for possession and mandatory injunction under Section 6 of the Specific Relief Act. It was claimed that a settlement was arrived at between the parties on 20.09.2012 that the petitioners are in possession of 41 sq.yds. of land out of which there is a room in the area of about 34.50 sq.yds. and in the remaining area of 6.50 sq.yds. the petitioners were using the same for passage and for bathroom. It was averred that on 02.03.2013 petitioner No.1 had gone to attend a function at Jetpur, Rajasthan and when she came back to her house she found respondent No.1 has demolished his portion and demolished the bathroom of the petitioners and taken forcibly and illegally possession of 6.50 sq.yds. of

land. Hence, the present suit was filed.

3. The trial court by the impugned order noted as follows:

- (i) The suit property is not properly identified in the plaint.
- (ii) Documents of title of the land are not produced as evidence in proof of the ownership of the said land.
- (iii) The settlement arrived at between the parties is not capable of being given effect to because the said settlement is inherently ambiguous inasmuch as the settlement does not record the fact of possession of the parties over specific identified portion of the concerned property.
- (iv) The settlement confines itself to possession and not possessory title or proprietary title in respect of property.

Hence, in view of the above reasons, the trial court dismissed the suit.

4. I have heard the learned counsel for the parties.

5. The learned counsel for the petitioners has pointed out that the suit has been dismissed at the threshold without framing of issues or evidence. He further submits that the trial court has wrongly gone on the issue of title whereas in a suit under Section 6 of the Specific Relief Act the issue of title is not material.

6. The learned counsel for the respondents has tried to point out that the suit is entirely frivolous and contrary to the settlement on record including the settlement dated 29.05.2012, settlement of 2009 and a compromise of 2006.

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

“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.”

8. I may first see the judgment of this court in the case of ***Dharam Dir & ors. vs. Ancha Devi, 53(1994) DLT 191***. This court held as follows:

“6. However, with respect, I do feel that since the right to possession of immovable property and the right to enjoy profits thereby are distinct causes of actions, a person who stands dispossessed of immovable property is entitled to sue for its possession under Section 6 and has to leave the question of damages/manse profits for another suit since that would depend on title, a matter which is beyond the pale of a suit under Section 6 of the Act. We can ill afford to ignore the object of Section 6 which clearly is to discourage forcible and unlawful possession and in order to grant relief the Court is required only to see whether the person seeking relief was dispossessed within six months of the date of the institution of the suit. It is not required to go into any other question. This being the position, I do feel that a Court cannot pass a decree for damages/manse profits under Section 6 of the Act Along with a decree for possession. The question, however, is that if that be so is the impugned decree liable to be set aside altogether?”

9. Hence, the legal position as stated in the above judgment is that the right to possession of immovable property and the right to enjoy property are distinct cause of action. In a suit filed under Section 6 of the Specific

Relief Act, the court is only concerned with the possession of the party claiming to have been dispossessed. The issue of title does not arise. The trial court has erroneously gone into issues other than possession and dismissed the said suit without discussion on merits of the case. The order suffers from material illegality and is contrary to the legal position.

10. Keeping in view the above, the present petition is allowed and the impugned order is quashed. The matter is remanded back to the trial court for fresh adjudication. Pending applications, if any, also stand disposed of accordingly.

11. The parties are directed to appear before the trial court on 08.03.2017 for appropriate adjudication of the suit as per law.

JAYANT NATH, J.

FEBRUARY 10, 2017/v