

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

RSA No.927 of 2018 (O&M)

Date of Decision: July 03, 2018

Ranjan Sood

---Appellant

Versus

Om Parkash

---Respondent

Coram: Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Divanshu Jain , Advocate for the appellant.

Mr.Ashish Bansal, Advocate for the respondent-caveator.

HARINDER SINGH SIDHU, J.

The defendant has filed this regular second appeal against the judgments of the Courts below whereby the suit of the plaintiff has been decreed.

The plaintiff filed a suit for mandatory injunction for directing the defendant to restore to him the possession of booth No.129, Sector 15, Chandigarh, which was alleged to have been illegally and forcibly taken by the defendant on 20.06.2009 and to hand over goods worth approximately Rs.10,00,000/-, the original allotment letter of booth and other important documents, which were alleged to be forcibly taken away by the defendant. It had also been prayed that the agreements to sell dated 20.02.2008 and 17.01.2009 and the undated document showing possession to have been handed over by the plaintiff to the defendant on 20.06.2009 be declared as forged, fabricated and null and void. Damages for the use and occupation of booth from the date of dispossession till restoration of possession were also claimed.

of booth No.129, Patel Market (Rehri Market), Sector 15 Chandigarh and that he has been running his business from the said booth under the name and style of 'M/s Bawa Crockery House' and was dealing with sale of steel and brass crockery and plastic goods. The Booth was allotted to him by the Chandigarh Administration on 04.05.1993 on lease for 99 years. He has been paying installments of Rs.910/- per year. An amount of Rs.58,000/- is still due to the Chandigarh Administration. The booth is of the size 8 ft x 8 ft. The market value thereof at the time of filing of the suit was stated to be approximately Rs.35,00,000/-. It was stated in the year 2008 the value of the booth was approximately Rs.30,00,000/-. It was pleaded that the plaintiff was only 9th pass. He was not well conversant with English language. He could sign in English but could not read or write in English.

It was pleaded that the defendant was running his business from booth No.276, Patel Market, (Rehri Market), Sector 15, Chandigarh. The defendant was also engaged in money lending as a side business. In the year 2005, Mohit Kumar son of the plaintiff started assisting him in running the business as the plaintiff wanted to diversify into other areas. His son thereby came in contact with the defendant. Mohit Kumar took a loan of Rs.10,000/- from the defendant in the year 2005. The loan was to be returned within a period of 110 days. Rs.100/- was to be repaid daily. This amount was repaid. At the time of lending the money, the defendant had taken two blank signed stamp papers from Mohit Kumar. The signatures of the plaintiff were also obtained on those papers. Mohit Kumar took a loan of Rs.10,000/- from the defendant on three occasions. Apart from that, he also took extra loan as dasti loan which was at a very exorbitant rate

of interest and was repayable within one or two weeks. Though all the loans were repaid by son of the plaintiff, however, the defendant did not hand him back the blank signed documents. The plaintiff's son thereafter took up some private service. The plaintiff also took some loan from the defendant. In 2007, the plaintiff took a loan of Rs.15,000/-. It was repaid with interest. In November/December 2007, the defendant got the plaintiff to sign some blank documents i.e. two blank signed cheques, one blank signed stamp paper and one or two blank signed pages. The plaintiff took a loan of Rs.32,900/- from the defendant on 03.03.2008, which he was repaying with a daily installment of Rs.200/-. When only Rs.12,000/- remained as due, the defendant warned the plaintiff that in case this amount of Rs.12,000/- was not returned till 21.01.2009, the amount payable would be doubled. He was made to accept those terms in writing. Sometime later, the defendant came with blank stamp paper of Rs.5/- dated 16.01.2009 and forced to plaintiff to sign that as well. Both these documents were retained by the defendant. On the night of 20.6.2009 at about 9.45 pm, when the plaintiff was about to close his shop, the defendant along with six persons came there. They severely beat up the plaintiff. They also took Rs.7,000/- cash from his pocket and forcibly fixed their own lock on the booth. The incident was said to have been witnessed by the booth owners of the adjacent booths. Though the plaintiff informed the Police Beat Box but the police officials did not intervene in the matter. Even the police of Police Station Sector 11, did not help the plaintiff but openly sided with the defendant. It was after much persuasion that the statement of the plaintiff was recorded. The plaintiff was taken to Government Hospital, Sector 16, Chandigarh where he was medically examined. Instead of

taking any action against the defendant proceedings under Section 107/151 Cr.P.C. were initiated against both the plaintiff and the defendant. They were both arrested and released on bail at about 1.00 pm on 21.06.2009. The plaintiff sent a legal notice dated 24.06.2009 calling upon the defendant to restore possession. However, the defendant did not reply to the said notice. The plaintiff gave written complaint dated 26.06.2009 to SHO Police Station, Sector 11, Chandigarh. He also sent a complaint dated 23.07.2009 to SSP, Chandigarh at the Public Window System. A complaint was also sent to the Governor on 23.07.2009.

It was further pleaded that the defendant in connivance with Sandeep Sood and Nitin Dhawan had misused the blank signed papers and other papers containing signatures of the plaintiff and his son for forging (i) Agreement to Sell dated 20.02.2008 pertaining to booth; (ii) Another agreement to sell dated 17.01.2009 and (iii) a false document purported to be regarding handing over of physical possession of booth by the plaintiff to the defendant on 20.06.2009 and acknowledging receipt of Rs.50,000/- by the plaintiff in lieu of the goods lying in the booth. It was pleaded that the plaintiff did not enter into any such agreement to sell nor had he received any amount in lieu of goods lying in booth nor did he hand over the possession of booth to the defendant. His case was that the possession was forcibly taken by the defendant, who also attacked him and caused him injuries on 20.06.2009 at about 9.30 pm, which fact is corroborated by the DDR No.63 dated 21.03.2009 recorded at 2.10 am and proceedings under Section 107/151 Cr.P.C, and the MLR of the plaintiff at 1.20 am on 21.06.2009.

Upon notice the defendant put in appearance and filed written statement along with counter claim. It was pleaded that the plaintiff agreed to sell

the suit property to the defendant for a total consideration of Rs.14.00 lakhs vide agreement to sell dated 22.02.08. Rs. 8.00 lakhs was paid to the plaintiff as earnest money at the time of agreement. The original allotment letter of booth was also handed over by the plaintiff to the defendant. It was agreed that plaintiff would be given 9-10 months to complete the remaining formalities and documents required to complete the sale. The balance amount of Rs.6 lakhs was to be paid at the time of execution and registration of documents of sale in the Estate Office, Chandigarh. It was also agreed that in case the plaintiff backs out from the bargain, he would be liable to refund Rs.16 lakhs i.e. double of the earnest money. On the plaintiff's request, the defendant paid a sum of Rs.32,900/- through cheques which were required to be deposited in the Estate Office, Chandigarh. This amount was not to be adjusted in the balance sale consideration as the plaintiff himself agreed to and in fact refunded the same. However, the plaintiff failed to complete the formalities in time and vide writing dated 17.1.2009 the time to complete the formalities was extended to 31.5.09. It was agreed that in case papers are not arranged the plaintiff will hand over the physical possession of the booth to the defendant and the defendant will separately pay for the cost of the stock in the booth at that time. As the plaintiff failed to complete the formalities, he handed over physical and vacant possession of the booth to the defendant on 20.6.09 after receiving an amount of Rs.50,000/- towards price of the goods lying in the booth. Since then the defendant is in peaceful possession of the booth in question. After handing over possession the plaintiff lodged a false complaint with the police. It was further the case of the defendant that even thereafter the plaintiff requested the defendant to pay some more amount required to be

deposited with Estate Officer. The defendant paid Rs.10,000/- through Pay Order No.071928 dated 4.1.2010 in the name of Estate Office, UT Chandigarh. It was pleaded that the defendant was always ready and willing to perform his part of the contract and was also ready with the balance sale consideration but due to delay in completing the formalities by the plaintiff, the sale could not be completed. The defendant paid the amount till 4.1.2010 in good faith to the plaintiff. The defendant has already paid a sum of Rs.8.10 lakhs out of Rs.14 lakhs leaving a balance of Rs.5.90 lakhs. The defendant was and is still ready and willing to perform his part of the contract. It was submitted that the counter claim of the defendant be allowed and specific performance of the agreement to sell dated 20.02.2008 and 17.01.2009 be decreed. Alternatively, a decree for recovery of Rs.16 lakhs being twice the earnest money paid along with interest be passed.

In order to prove his case, plaintiff examined himself as PW-1. He also examined PW-2 Dr. Ashok Kumar, who proved the medical report Ex. PW-2/1, PW-3 Darshan Kumar who is running his shop in the same area as witness to the incident of forcible dispossession, PW-4 Mohit Kumar his son, PW-5 Gurdial Singh another witness. He placed on record a copy of the allotment letter Mark P-1, copy of statement/writing Ex.PA, copy of the complaint by the plaintiff to SHO Ex. P-A/1, copy of another complaint by plaintiff to SHO Ex.PB, copy of complaint by the plaintiff to SSP Ex. PC, copy of complaint by plaintiff to Governor Ex. PD, copy of the complaint by the plaintiff to SSP regarding forcible possession Ex.PE, report of Doctor regarding medical examination of the plaintiff Ex. PW-2/1 etc.

The defendant on the other hand examined himself as DW-1, Sandeep

Sood as DW-2, who identified his signatures on the agreement to sell Ex.D-1 and the writing dated 17.01.2009 Ex. D-2 . He placed on record documents i.e. copy of agreement to sell dated 20.02.2008 as Ex.D-1, copy of writing dated 17.01.2009 extending the time as Ex. D-2, copy of writing dated 20.6.2009 regarding handing over of vacant possession and receiving Rs.50,000/- as Ex. D-3, copy of certificate of bank regarding payment of Rs.10,000/- to Estate Office by Pay Order as Ex. D-4.

Ld. Trial Court noted that the defendant DW-1 in his cross-examination admitted that both the witnesses to the agreement dated 20.02.2008, Sandeep Sood and Nitin Dhawan were his close relatives. Sandeep Sood was his nephew and Nitin Dhawan was his real brother-in-law. The Court noted that this was not in consonance with the usual practice of business where one witness usually belongs to each party. The Court further noted that in the agreement Ex. D-1 defendant Ranjan Sood claimed to have paid Rs.8,00,000/- as earnest money but he had not brought on record any evidence of payment of the said amount to the plaintiff nor had he brought any evidence to show that he had the financial capacity to pay the said amount. The Trial Court noted that the defendant in his cross-examination had admitted that he was earning Rs.18,000/- to 20,000/- along with his nephew till 2009. After 2009 his income was Rs.20,000/- to 25,000/-. He also admitted that he was not doing any other business nor did he have any other property in his name. The Court noted that that the defendant had also failed to show that he had the financial capacity to pay the balance sale consideration of Rs.6,00,000/-. Regarding the document Ex.D-3 as per which the defendant claimed that possession has been handed over to him on 20.06.2009 at 9.30 pm

and the plaintiff had received Rs.50,000/- as value for the goods lying in the shop. Ld. Trial Court noted that the sole witness to this writing Deepak had not been examined. Moreover, the fact that admittedly a quarrel had occurred between the plaintiff and defendant at about the same time of the alleged handing over of possession, regarding which a DDR was lodged and proceedings under Section 107/151 Cr.P.C. were initiated, in which both the plaintiff and the defendant and one Deepak were arrested, falsifies the said document and supports the version of the plaintiff that forcible possession had been taken by the defendant. The version of the plaintiff regarding the quarrel and taking over the possession forcibly by the defendant was also supported by the PW-3 Darshan Kumar and PW-5 Gurdial Singh. Further, the version of the plaintiff that he and his son had taken loan from the defendant at different times was accepted in view of the fact that the plaintiff had proved on record receipt Ex.P-A and the defendant admitted his signatures on the said writing. Ex.P-A contained the signatures of the defendant 16 times consecutively. It was also written therein "Mohit (15-D) 11,000/- 14.07.2007". The defendant was not able to explain his signatures on this document. Plaintiff's version was further supported by the admission of the defendant that he had given Rs.32,900/- to the plaintiff somewhere in March, 2008 through cheque and same was returned to him. The Ld. Court held that it did not appear plausible that the plaintiff would return Rs.32,900/- to the defendant when a balance sale consideration of Rs.6,00,000/- was due. If such an amount was due he would instead adjust it against the amount due. The mere fact that the defendant made a payment of Rs.10,000/- to the Estate Officer in regard to the booth after the alleged forcible dispossession of the plaintiff was held to be not sufficient to show

and prove the prior peaceful handing over of possession of the booth to the defendant.

The Court further noted that DW-1 admitted that the agreement Ex. D-1 was signed by him outside the Estate Office, where Advocates and Notaries were sitting. No reason was forthcoming as to why these documents were not registered or notarized when they were executed at a place where Notaries/Oath Commissioner were available.

The Ld. Trial Court thereby concluded that though the documents Ex.D-1 and D-2 contained the signatures of the plaintiff and his son and hence, could not be called forged and fabricated documents but it was clear that these documents were given as security for the loan obtained by the plaintiff and his son and it was not the intention of the parties to use them as an agreement to sell. The Court concluded that the defendant had failed to prove both the due execution of these documents and his readiness and willingness and his financial capacity to pay the balance sale consideration. He had also failed to prove Ex.D-3 as evidence of handing over peaceful possession of the booth by the plaintiff. Rather it had been proved that the defendant had taken forcible possession of the booth and the plaintiff was entitled for restoration of the same. Accordingly, the suit of the plaintiff was decreed to the effect that he was held entitled to possession of the suit property. The defendant was directed to hand over vacant possession of the premises to the plaintiff within two months. The agreement to sell dated 20.02.2008, the writing dated 17.01.2009 extending the time and the document purporting to hand over peaceful possession of the booth to the defendant on 20.06.2009 were declared null and void. The counter claim of the defendant was

dismissed.

The learned lower Appellate Court affirmed the findings of learned lower Court and gave additional reasons for doubting the documents. Noting that the signatures on the documents had not been denied by the plaintiff but he had pleaded that his signatures had been obtained on blank papers, the Court noted that the document Ex. D-1 is only a one page document not detailing the terms and conditions between the parties. On Ex.D-I the plaintiff is shown to have signed at two places. The agreement to sell is dated 20.2.08 whereas the stamp paper is purchased on 29.11 without mention of the year. On the back side of the document Ex. D1 also there are three signatures in the blank of the plaintiff. This also raises suspicion with regard to the document and it can only be inferred that the document has been signed in blank by the plaintiff at some point of time. Otherwise there was no need for him to sign at three places on the back of the document in blank. The stamp paper on which the document is prepared is of 29.11 whereas the date of agreement to sell is 20.2.08 i.e. after a period of about three months even if it is assumed to have been purchased in the year 2007. Similarly document Ex. D2 is also signed at two places by the seller and the stamp paper has been purchased by the purchaser himself. It had not been explained as to why the purchaser purchased the stamp paper when the stamp paper for Ex.D1 is shown to be purchased by the vendor Om Parkash.

Like the Trial Court the appellate Court also noted that though it was claimed by the defendant that Rs.8.00 lakhs was paid as earnest money but there is no receipt of payment of such an amount on the file. It was noted that it is highly improbable for a party to pay such a large amount in pursuance to

agreement to sell without taking receipt.

Like the Trial Court the Appellate Court noted that there have been instances of transaction with regard to borrowing money by the plaintiff from the defendant. As the parties were dealing with each other, at some point of time the documents signed by the plaintiff were available with the defendant. It was concluded that the documents Ex D1, Ex. D2 and Ex. D3 had been prepared on the papers which were already signed, were available with the defendant and hence did not reflect the true intentions of the parties. It was noted that Ex.D1 is a typed document and DW1 has stated in the cross-examination that it was signed by him in the premises of Estate Office where Oath Commissioner, Notary and Tehsildar are sitting. But strangely the document was not got attested from some person who was not related to the parties. Even the name of the typist has not been disclosed. There is also no mention therein of the documents that were required to be arranged by the seller.

The lower appellate Court also held that it did not stand to reason that having handed over peaceful possession of the suit property on 20.06.2009 the plaintiff would at the same time lodge a complaint with regard to forcible possession of the said booth. The plaintiff also suffered injuries in the incident which is proved by PW2 Dr. Ashok Kumar EMO, GMCH-16 Chandigarh who medico- legally examined the plaintiff on 21.6.2009 and the MLR was proved as Ex. PW2/1. PW 2 has not even been cross-examined by the defendant despite opportunity. PW3 has further corroborated the incident in his affidavit Ex. PW3/A. The Court further took note of the fact that the plaintiff had filed a criminal complaint against the defendant for causing injuries to him while taking forcible

possession in which the defendant was convicted.

Having opined on merits against the defendants the Ld. Lower Appellate Court also held that as the suit filed by the plaintiff had been decreed and the counter claim filed by the defendant had been dismissed, the defendant was required to file two separate appeals, one for assailing the judgment in the suit and the other for assailing the judgment in the counter claim. But as he had filed only one appeal the same was not competent. Reliance was placed on a decision of the Kerala High Court in **Girija and others Vs. Rajan and others 2015(2) RCR Civil 320** and Karnataka High Court in **Mellan Vs. Muninanjanma AIR 2001 Kant. 205**.

Before the Ld. Lower Appellate Court the defendant had moved an application under Order 41 Rule 27 for leading additional evidence to prove that he had withdrawn Rs.9,10,000/- on 11.2.2008 from Account No.001301076731 of his brother Raman Sood. It was argued that though the defendant had brought this fact to the notice of his counsel before the Trial Court but he did not prove this fact by summoning the bank record. The evidence was stated to be material for the decision of the case. The Ld. Lower Appellate Court however dismissed the application. It was held that it was not open to a party at the stage of appeal to make fresh allegations and call upon the other side to admit or deny the same. Lack of legal knowledge or proper legal advice is no ground for production of additional evidence at the appellate stage. The provision cannot be used to fill up any lacunae or gaps in the appeal. Moreover, there was no pleading in the written statement or the counter-claim in this regard and hence, at the stage of appeal the defendant could not be allowed to give evidence to fill the gap.

Mr. Divanshu Jain, Learned counsel for the appellant has raised the following contentions:-

- i) The learned lower appellate court having held that two appeals ought to have been filed and that a single appeal was not competent ought not to have decided the appeal on merits. The findings of the learned lower appellate Court on merits of the case are hence un-sustainable.
- ii) The plaintiff claims to have been forcibly dispossessed on 20.6.2009. A suit for possession under Section 6 of the Specific Relief Act, 1963 could have been filed within six months thereof. As the suit was filed on 20.1.2010 after six months of the dispossession, it was not maintainable.
- iii) As admittedly the plaintiff was not in possession of the property, a simpliciter suit for declaration without claiming possession and paying ad valorem court fee was not maintainable. Neither the Trial Court nor the learned lower appellate court has specifically dealt with the issue of maintainability and Court fee which were specifically raised by the defendant before both the courts.
- iv) The learned lower appellate has not given issue wise findings. Hence, the judgment is not sustainable and the case deserves to be remanded.

Mr. Jain cited a number of judgments in support of his contentions.

Mr. Ashish Bansal Learned counsel for the plaintiff-respondent has countered the aforesaid submissions. He argued that the Learned Lower Appellate

Court first considered the merits of the appeal and dismissed the same. The

question of a single appeal being not competent was only an additional ground mentioned by the Court. Moreover, this ground is not legally sustainable as the decisions relied on by the learned lower appellate court had already been reversed by a Division Bench of the Kerala High Court in **Cholapilakkal Abdul Nazer vs. Kuttanparambath K. Laxmana 2016(3) Ker.L.J. 429** which was not brought to the notice of the Court.

Regarding the argument that suit having been filed beyond six months of dispossession was not maintainable in terms of Section 6(2) of the Specific Relief Act, learned Counsel stated that after the plaintiff was dispossessed on 20.6.2009 proceedings under Section 107/151 Cr.P.C. were initiated against both the plaintiff and defendant. These proceedings were dropped on 29.7.2009 with a direction to seek remedy from a competent court of law. The suit was instituted within six month thereof on 20.01.2010. He relied on a judgment of Hon'ble Supreme Court in **Behari Lal and another Vs. Smt. Bhuri Devi and others, AIR 1997 SC 1879** to contend that as the suit is filed within six month of dropping the proceedings under Section 107/151 Cr.P.C. the suit under Section 6 of the Specific Relief Act would be within limitation and ad valorem Court fee was not payable. He further argued that if this Court comes to the conclusion that ad valorem Court fee is payable it could direct accordingly as the question of court fee is a curable defect. He also relied on a decision of Hon'ble Supreme Court in **U.P. State Brassware Corpn. Ltd. and another Vs. Udai Narain Pandey, (2006)1 SCC 479** to contend that the Court can always mould the relief or otherwise give such relief as the parties may be found to be entitled in equity and justice in terms of Order 7 Rule 7 of the Code of Civil Procedure.

Regarding the argument that the Lower Appellate Court has not given issue-wise findings, Learned counsel contended that only the issues raised before the lower appellate court were required to be decided. The defendant had questioned the findings of the learned trial court on issues No.1, 2 and 5 to 10. He stated that the said issues have been considered and decided. Though no separate issue-wise finding has been recorded but the Court had discussed the evidence in detail and supported the judgment by reasons. No fault can be found therewith. He relied upon **G.Amalopavam V. R.C. Diocese of Madurai, 2006(3) SCC 224.**

He further submitted that even if the specific issue of maintainability and ad valorem Court fee has not been decided by the Courts below, this Court should itself decide it and not remand the matter.

He also defended the findings of fact recorded by the courts below and said they are based on evidence. He submitted that the appeal be dismissed.

Having heard Ld. Counsel for the parties I am of the view that the appeal deserves to be dismissed.

On the first contention raised by Mr. Jain, Ld. Counsel for the respondent has rightly argued that the Appellate Court first considered the appeal on merits. The question of maintainability of a single appeal was only an additional ground mentioned by the Court. Moreover, this ground was not legally sustainable as the decisions relied on by the learned lower appellate court had already been reversed by a Division Bench in **Cholapilakkal Abdul Nazer vs. Kuttanparambath K. Laxmana 2016(3) Ker.L.J. 429** as per which a single appeal was maintainable against a composite decree in a suit and counter-claim.

The findings on merits would have been considered non est if, in fact, a single

appeal was not legally competent. As a single appeal was competent the findings on merits recorded by the Court cannot be considered non est.

The question of maintainability and Court fee needs to be dealt with next. In support of his argument that the instant suit could be considered as a suit under Section 6 of the Specific Relief Act, Ld. Counsel for the respondent had stated that after the plaintiff was dispossessed on 20.6.2009 proceedings under Section 107/151 Cr.P.C. were initiated against both the plaintiff and defendant which were dropped on 29.7.2009 with a direction to seek remedy from a competent court of law. The suit having been instituted within six months thereof on 20.01.2010 could be considered as one under Section 6 of the Specific Relief Act.

This contention cannot be accepted. In ***Behari Lal's case*** (*supra*) proceedings had earlier been initiated under Section 145 Cr.P.C. at the instance of the party who had been dispossessed. These proceedings ended in a direction by the High Court in a Criminal revision to file a suit. Thereafter the suit for possession and damages was filed. It was in this context that Hon'ble Supreme Court held that the suit, though not filed within six months of dispossession, but filed immediately after dropping of the proceedings under Section 145 Cr.P.C. by the High Court giving liberty to file a suit for possession, could be treated as a suit under Section 6 of the Specific Relief Act. The relevant observations are as under:

“10. The next question is : whether the decree for possession could be granted in favour of the appellant. It is true that the suit was not filed within six months under Section 6 of the Specific Relief Act. But, as seen earlier, the proceedings under Section 145 were initiated at the instance of the respondent Ram Gopal and were pending for long time until the revision was dismissed by the High Court giving liberty

to the appellant to file the suit for possession. Under these circumstances, the suit came to be filed immediately after the proceedings came to a terminus, no doubt, after issue of notice to the Government under Section 80 Civil Procedure Code and after expiry of 60 days time required under Section 80 Civil Procedure Code. Under these circumstances, it must be concluded that in substance the suit is one under Section 6 of the Specific Relief Act.”

This judgment cannot be read in the manner proposed by the Ld. Counsel for the respondent. It does not lay down that the time spent in any kind of proceedings emanating or arising out of forcible dispossession is to be excluded. In proceedings under Section 145 Cr.P.C., the party wrongfully dispossessed can be restored possession just as in Section 6 of the Specific Relief Act. Whereas proceedings u/s 107/151 Cr. P.C. are for security for keeping peace and arrest to prevent the commission of cognizable offences. There is no reason or justification to exclude the time spent in these proceedings. Thus it has to be held that the present suit having been filed beyond six months of dispossession on 20.6.2009 cannot be construed to be a suit under Section 6 of the Specific Relief Act. It has to be treated as a suit for possession on which ad valorem Court fee is payable. .

The last contention of the learned Counsel for the appellant that as the Lower Appellate Court has not given issue- wise findings the judgment is not sustainable also does not merit acceptance. It has been held by Hon'ble Supreme Court in **G. Amalorpavam's** case (supra) that if there has been a substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code and the findings of the lower appellate Court can be ascertained, then the judgment cannot be held to be void. It was held that where the appellate court has considered the

entire evidence on record and discussed the same in detail and come to a conclusion and its findings are supported by reasons then even though the points for determination have not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code and the judgment is not in any manner vitiated by the absence of a point of determination.

The relevant observations in this regard are as under:

“8. The question whether in a particular case there has been a substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code has to be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions may not vitiate the judgment and make it wholly void, and may be ignored if there has been substantial compliance with it and the second appellate Court is in a position to ascertain the findings of the lower appellate Court. It is no doubt desirable that the appellate court should comply with all the requirements of Order 41 Rule 31 CPC. But if it is possible to make out from the judgment that there is substantial compliance with the said requirements and that justice has not thereby suffered, that would be sufficient. Where the appellate court has considered the entire evidence on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the appellate Court there is substantial compliance with the provisions of Order 41 Rule 31 Civil Procedure Code and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower appellate court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower appellate court, it would be a valid judgment

even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the appellate court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enable them to know the basis of the decision and if so considered appropriate and so advised to avail the remedy of Second Appeal conferred by Section 100 Civil Procedure Code.”

In the present case, the lower appellate court has considered the evidence on record and supported its conclusions with reasons. While affirming the findings of the Trial Court it has also given additional reasons in support of its conclusions. Thus, its judgment cannot be faulted on this ground as well.

There is also no infirmity in the order of the Court rejecting the application of the defendant for leading additional evidence.

As regards the concurrent findings of fact recorded by the courts below Learned counsel for the appellant has not been able to establish as to how these findings are perverse or against the record.

Thus, this appeal is dismissed. However the execution of the decree be kept in abeyance for 30 days. It is also directed that before executing the decree the plaintiff shall pay ad valorem court fee on the relief of possession.

July 03, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No

